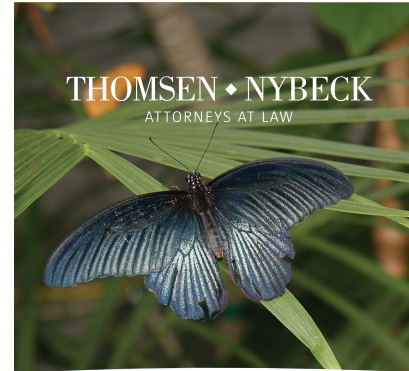


THOMSEN ♦ NYBECK
ATTORNEYS AT LAW

3600 American Blvd. W.
Suite 400
Bloomington, MN 55431
P: (952) 835-7000
F: (952) 835-9450
www.tn-law.com

PRESORTED
STANDARD
U.S. POSTAGE
PAID
PERMIT NO 1
MINNEAPOLIS, MN



The Quarterly Newsletter of Thomsen Nybeck

Briefings

VOLUME 5, ISSUE 2
SPRING 2011

TN TOP 5

Reasons to Give Back

While there are many reasons to volunteer your time, talent or money to community and charitable causes, here are the top five reasons that Thomsen Nybeck gives back:

- 5. We have fun together.** Participating in an activity outside of work is a great way to see each other in a different light and enjoy each other's company.
- 4. We make unexpected connections.** Community involvement is a great way to increase firm visibility and showcase firm skills.
- 3. It promotes teamwork.** We are working toward a common goal and can see the different skills and strengths of our colleagues in a group setting — some of whom we don't work with on a daily basis.

- 2. It builds pride in the firm.** According to VolunteerMatch, employees who work for community-minded companies feel better about working for that company because they see an investment beyond the bottom line. It may contribute to higher retention.
- 1. It feels good.** A group of Thomsen Nybeck employees recently got together to make 700 sandwiches for 363 Days, an organization dedicated to feeding the hungry. Currently, 363 Days feeds about 2,000 people daily in the Minneapolis area, mainly through volunteer efforts. It made all of us feel good to know that our time resulted in many people receiving a meal who might have otherwise gone hungry.

363

What's your time worth?

www.363days.org

Pay Attention To Employee Time And Wages

As a restaurant in Copiague, New York learned the hard way, failure to track and pay an employee accurately for all hours worked can lead to a big matzah ball of legal liability. The Wage and Hour Division of the United States Labor Department has announced that the restaurant was ordered to pay \$390,000 in back wages to approximately 40 employees who had not properly been paid overtime pay and had not received the equivalent of the required minimum wage, despite working 70-80 hours per week in some cases. Based upon "liquidated damages" provisions under applicable law, the restaurant also was ordered to pay an additional amount equal to the back pay owed to the employees. As a result, the restaurant was required to pay the employees a total of \$780,000. The restaurant also apparently was adjudged not to have properly tracked wages and tips, and to have paid employees with un-tracked cash payments, leading to an additional civil fine of \$20,000. All told, the restaurant is picking up an \$800,000 tab for its lax record keeping and for underpaying its overworked employees.

The action against the employer was based upon the Fair Labor Standards Act (FLSA), a federal law which requires employers to pay qualifying employees at least the federal minimum wage (though states may require a higher minimum wage), plus time and a half for time spent at work beyond 40 hours in a given week. A common exception that employers might assume applies is the ability to pay an employee a lower minimum wage when the employee receives compensation through tips paid by customers (e.g., the food service industry). However, this exception still remains subject to the requirement that the employer make up the difference if the employee, after the application of tips, is not making the equivalent of the applicable minimum wage. It is unclear whether this provision applied to the employer in this situation. There also are child labor provisions of the statute that were not implicated here.

Although there is no indication the violations were inadvertent in this instance, an employer is not excused from paying an employee overtime even if the employer has not directed the employee to

work overtime, but the employer generally has to be aware the employee is doing so before it is responsible to pay. There is a two-year limitation on an employee's suit to recover back pay unless the employer's violation is "willful", in which case the employer may be sued for up to three years' back pay.

There also are provisions under the FLSA that are aimed at protecting employees who report a violation. These provisions say the employer may not take an adverse or negative action against an employee in retaliation for the employee's complaint or report of a violation of the FLSA. Just as with the underpayment of wages, if an employee is fired as a result of pursuing relief under the FLSA the employer may be required to pay the employee lost wages and additional liquidated damages equal to the amount of those lost wages. The employer may even be required to re-hire the employee.

The FLSA is a federal law and it applies to employees throughout the country. There also may be state laws that apply to a given situation where their compensation has gone unpaid (or underpaid) or if there has been a failure to account for employee time. For example, our home state of Minnesota has passed legislation that provides strong remedies to employees, and even commission-based agents, who have not been paid as required. There are strict timing requirements that apply to these payments as well.

Employers or employees with questions about whether a business is in compliance with the law should seek the assistance of counsel in determining whether the FLSA applies and whether changes are necessary. Also, an attorney can pursue or defend cases for recovery of unpaid wages under the FLSA as well as applicable state laws. If you have a question, contact us at Thomsen Nybeck.

--
Matt Drewes contributed to this article. He practices primarily in the areas of Commercial Litigation, Community Association Law, Construction Litigation, Creditors Remedies and Debtor/Creditor Law, Real Estate Litigation and Insurance Litigation. mdrewes@tn-law.com; (952) 835-7000.

NEWS & NOTES

Minnesota Construction Warranty Claims: New Procedures for 2011

Thomsen Nybeck is tracking changes to Minnesota construction warranty law and how homeowners can exercise their rights when discovering construction defects. The new statute, effective January 1, 2011, has the goal of reducing the necessity for homeowners to file lawsuits to resolve their claims. However, homeowners should still understand their responsibilities and rights under the new law.

For example, homeowners must still provide written notice of an alleged defect to the builder or remodeler ("contractor") within six months of discovering the defect; a new exception is that the owner can demonstrate that the contractor had actual notice of the claimed defect. Of course, it's best to provide timely written notice if you wish to rely on this statutory warranty.

The new amendment also allows the contractor to conduct "invasive" testing to determine the extent of any damage or the proper type of repair. The contractor is also required to place the property back into "pre-inspection condition" following any invasive procedures, but it is unclear how this restoration process will be measured or enforced in practice.

There is also a new procedure for dealing with disputes between the homeowner and contractor on resolving defects or handling repairs.

These warranties apply to new or newly remodeled residential property (which can include single-family homes or community associations, such as condominiums or townhouses), and are binding against the contractor.

To learn more about the amendment to Chapter 327A of Minnesota Statutes, read our entire blog post – written by Matt Drewes - at: www.tnupdate.wordpress.com/2011/01/18/minnesota-construction-warranty-claims-new-procedures-for-2011/

--
Matt Drewes contributed to this article. Matt practices primarily in the areas of Commercial Litigation, Community Association Law, Construction Litigation, Creditors Remedies and Debtor/Creditor Law, Real Estate Litigation and Insurance Litigation. mdrewes@tn-law.com; (952) 835-7000



Trying on a New Look for Spring!

We recently updated the look of our website. Take a look: www.tn-law.com

And don't forget to check out our blog, too: www.tnupdate.wordpress.com.

Thomsen Nybeck is pleased to announce the addition of **Sarah Bennett (1)** as an associate attorney. Sarah will primarily serve in the transactional area of the firm's practice, including areas of real estate, homeowner's association and business formation. To learn more about Sarah, read her profile on page two of this newsletter.

Thomsen Nybeck's Community Association Representation Group presented its 18th annual Community Association Seminar on Tuesday, April 26, 2011. Approximately 150 community association board members, managers and related professionals attended the evening presentation, received the informative packet containing information, articles and legal authorities affecting their communities, and had the opportunity to ask questions of our attorneys. Thomsen Nybeck continues to make this a free event for its clients and friends.

On April 7, **Gretchen Schellhas (2)** gave a presentation to R/JF Agencies on board member duties and insurance issues.

Natalie Walz (3) competed in the Boston Marathon for a second time and finished in 3 hours and 18 minutes.

Chris Renz (4) just completed his eighth year as a legal writing instructor at the University of Minnesota Law School.

Matt Drewes (5) wrote an article regarding recent amendments to Minnesota Statutes Chapter 327A: Home Warranty Statutes Amended, Warranting Special Attention, which was published in the March/April 2011 issue of Minnesota Community Living Magazine.

Jack Carlson (6) spoke at The Minnesota Association of Public Accountants Seminar on October 28, 2010 on the subject of Minnesota Estates and Trusts. He also spoke at the 68th Annual Tax Institute of the Minnesota State Bar Association on S Corporations - Update and Planning Opportunities.



Sarah Bennett Attorney Profile

Where were you working before coming to Thomsen Nybeck?
I was working as General Counsel for RE/MAX Associates Plus, a residential real estate brokerage firm in the Twin Cities.

Why are you passionate about your career choice?
I'm passionate about my career choice because I enjoy helping individuals work out their problems, have a better understanding of a situation because of the assistance I've offered, or achieve something they would have otherwise not achieved without my help, such as forming a business or being a party to a successful real estate transaction.

What are you known for among clients, your personal brand?
I think my clients would say that I am a hard worker, very thorough and I attempt to meet their needs and goals if possible.

Favorite vacation?
In college I studied abroad for six months at the University of Barcelona. While that was not technically a "vacation" it was probably my most memorable trip.

Deserted island wish list?
If I could have 3 things on a deserted island they would be:
1. Friends
2. Good Book
3. Wine!

Most prized possession or memory?
That's a tough one; I have a lot of great memories of friends and family growing up. My favorite memories include times with friends and family at our family cabin on Round Lake in Nisswa, MN.

ATTORNEYS

This newsletter is presented to you by the attorneys of Thomsen Nybeck:

- | | |
|------------------------|-----------------------|
| Sarah Bennett | Debra M. Newel |
| Brad J. Boyd | Mark G. Ohnstad |
| Jack W. Carlson* | Dennis M. Patrick |
| Matthew A. Drewes | Christopher P. Renz |
| Gordon V. Johnson* | Gretchen S. Schellhas |
| Thomas R. Kelley | William E. Sjöholm |
| Nathan J. Knoernschild | Donald D. Smith* |
| Robert D. Lucas | Natalie R. Walz |
| David J. McGee | |

* Of Counsel

Cover page photo credit:
Brad Boyd

PRACTICE AREAS

Thomsen Nybeck has in-depth experience and knowledge in the following practice areas. For a complete list, visit www.tn-law.com. Call us at (952) 835-7000 to discuss your concerns or to determine if you have a case.

- | | |
|--------------------------------|----------------------------|
| Business Law | Family Law |
| Civil Litigation | Financing |
| Construction Defect Litigation | Personal Injury |
| Corporations & Partnerships | Real Estate |
| Criminal Law | Taxation |
| Employment Law | Townhome & Condominium Law |
| Estates, Wills and Trusts | Wind Energy |