



## Doing Business With Corporate Entities: Lessons to Learn From a Deal Gone Bad

By David Treacy and Patrick Schach of Dinsmore & Shohl LLP. Reprinted with permission.

At its core, each business's goal is usually the same – generating profits. This is true whether a business manufactures auto parts, provides medical services, or stages a traveling circus. Accordingly, a primary objective of each business is the collection of money owed; any business that fails to prioritize realization of its accounts receivable soon will find that it is no longer in business. Thus, it can be instructive to review one company's errors and its failed attempts to collect a debt. While the company undoubtedly learned from its mistakes, other businesses would be wise to review its situation and learn those same lessons without experiencing the corresponding loss.

Howell Contractors ("Howell"), a Kentucky contracting company, entered into a contract in 2005 with Westview, an LLC organized under Ohio law, to provide services in the building of a residential subdivision in southern Ohio. Several years and one housing

collapse later, Howell still was owed roughly \$180,000 from Westview for services rendered. After unsuccessful attempts to collect payment, Howell turned to the court system.

Howell filed suit in Kentucky, seeking a judgment against not only Westview, but also the individual owners of that LLC. In other words, Howell was attempting to "pierce the corporate veil" – impose the company's debts on its owners. Howell's case recently came before the Kentucky Court of Appeals (the "Court") in *Howell Contractors, Inc. v. Berling*, and that Court found that while Howell was entitled to a judgment against Westview, it could not collect from Westview's individual owners. This left Howell with a \$180,000 judgment against a company, Westview, which may have limited assets. At the end of

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### Hamilton County Law Library

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[www.http://www.hamilton-co.org/cinlawlib/](http://www.hamilton-co.org/cinlawlib/)

**Tech Tip:** iPad help! Rotating making you dizzy? Here's how to change your settings to lock your iPad view in three easy steps. By: Julie Koehne, Systems Librarian



Go into the settings by clicking on the settings icon.

1



General

2

Next, Select "General" on the left side of the screen.



3

On the right side of the screen midway down under "Use Side Switch to", select "Lock Rotation".



After following these simple steps you will be able to read documents, view movies and use the iPad while moving without the screen rotating on you unintentionally.

**Free CLE**

Free to subscribers; \$35 for non-subscribers

To register, call 513.946.5300 or via email [reference@cms.hamilton-co.org](mailto:reference@cms.hamilton-co.org)

**Lexis CLE: Advanced Searching & Shepard's**

Thursday, February 28

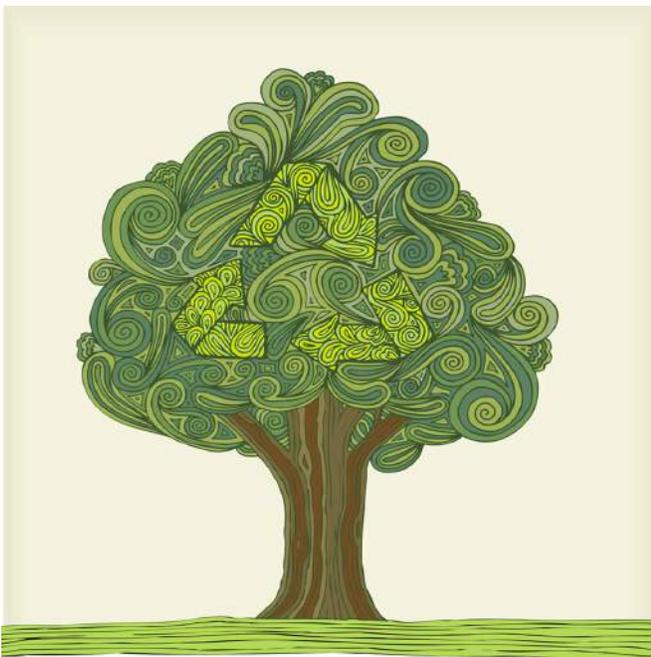
Noon-1pm

1.0 hour of general CLE in Ohio

**Go Green and Get the News First!**

Are you currently receiving the HCLL newsletter in print? Would you prefer an online version? HCLL subscribers who opt for the online version receive it before the print copy is mailed, plus the links for email and websites are active. We send out a summary via email each month with a link to the full text. To switch from print to online, just email

[reference@cms.hamilton-co.org](mailto:reference@cms.hamilton-co.org) with a request to switch formats.

**iPads Available for Daytime Loan to Subscribers**

Thanks to a grant from Ohio's Consortium of County Law Library Resources Boards, we now have six iPads available for daytime use. The iPads are preloaded with apps that are useful to legal professionals, including, among others:

- Wolfram Lawyer's Professional Assistant
- Litigator
- Documents to Go Premium – Office Suite
- Deponent App
- Court Days
- Notability
- HeinOnline
- Fastcase
- LawStack
- Congressional Record
- Calculator Pro
- Google Translate
- American Arbitration Association
- Lawyers.com
- CCH Mobile

Current Law Library subscribers may check out an iPad for the duration of the day upon presentation of a current photo ID. This service provides our subscribers with an opportunity to become acquainted with a tablet device and to try out an app before purchasing it for one's own tablet. Be one of the first users to check out an iPad and provide us with feedback through a brief survey.

**Library Assistant Search**

Our search committee is interviewing candidates for the Library Assistant position. We will announce our new hire in the next newsletter. The Library Assistant provides reception and administrative support for the Law Library. We are eager to welcome our new colleague. Thank you for your support and patience during our period of reduced staffing.

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the day, Howell may be out not only the \$180,000 but, regardless of whether it actually ever collects on the judgment, it is certainly out the significant legal expense of attempting to collect the \$180,000 via the court system. Three lessons can be learned from Howell's ordeal:

**Know Who You're Doing Business With:**

While this lesson is important for any number of reasons already known to successful businesses, the Court highlighted one additional reason most executives probably haven't considered. When deciding whether to pierce Westview's veil, the Court decided this issue under the law of Ohio, not Kentucky, because Westview was organized in Ohio. Because different states have different laws and different tests as to when it is appropriate to pierce the veil, companies could achieve varying degrees of success imposing company liabilities on individual members depending on the debtor's state of incorporation.

**Think About Seeking Personal Guaranties:**

While the home state of a potential business partner should be included in the calculus of deciding whether to begin a relationship, sometimes potential business partners are limited. Perhaps there is only one manufacturer that makes a particular type of widget, and the company needs that widget to make its product. In this scenario, and innumerable others, the market won't allow for one to select a partner from a favorable state after weighing the pros and cons of each – one must simply do business with the partner that's available. That doesn't mean there aren't alternative protections available, how-

ever. Consider seeking a personal guaranty from the potential business partner's principals. When an individual personally guaranties a particular liability, he is essentially co-signing for the debt, promising to pay the debt of the company should the company fail to appropriately satisfy it. Thus, if the corporate business partner does not meet its obligation, one could successfully pursue the individual without first having to litigate the complex veil-piercing question. If Howell had received joint and several guaranties from Westview's principals, it stood a better chance of collecting its \$180,000. It is important to note, however, that to be effective, a guaranty must meet certain legal requirements which vary by state (for Kentucky's requirements, see KRS § 371.065).

**Don't Throw Good Money After Bad:** While the first two lessons are things a business could do before entering into a business relationship to protect its interests down the road, this final lesson is something to remember if the deal still turns ugly. Those that remember this lesson will mitigate their losses and live to fight another day. Howell would have been wise to recall this principal of sunk costs once it realized Westview wasn't going to pay but before engaging in costly litigation in an attempt to pierce the LLC's veil. If there was any doubt before, the Court clarified that, in Ohio and Kentucky at least, a corporate entity's mere failure to pay its debt is not grounds to pierce the entity's veil. To determine whether pursuing litigation in a particular circumstance is a waste of resources or a sound tactical decision, it is always wise to discuss the strengths and weaknesses of one's case with counsel. In this situation, however, Howell would have been better served saving the money it spent

seeking to pierce the veil.

While it is too late for Howell to apply these lessons in its relationship with Westview, other companies can take them into consideration in the course of their own business. Those that take these lessons to heart will, at the end of the day, be more likely to enjoy the fruits of their labor and accomplish a common goal of all businesses – getting paid

For more information, contact Patrick D. Schach ([patrick.schach@dinsmore.com](mailto:patrick.schach@dinsmore.com)) or David J. Treacy ([david.treacy@dinsmore.com](mailto:david.treacy@dinsmore.com).)

## WestlawNext Coming Soon to HCLL

WestlawNext was introduced in early 2010 and was originally known by its code name, Project Cobalt. Its chief feature is its Google-like searching. Throughout the next two years, it was rolled out to the law firm and law school environments and, in 2012, to government libraries, including court and county law libraries.

With the Law Library's new contract, which should go into effect by March 1, we will be offering WestlawNext to our subscribers. Government and subscription law libraries that have rolled it out report high satisfaction with the interface but some concerns about search control and results. We will still have access to "Classic", the traditional Westlaw search interface with the option to search by fields, so you will be welcome to compare for yourself. We'll describe our new Westlaw resources and features in the next issue.

## New Acquisitions

The Law Library acquires new books and other resources each month. We display new books by the entrance but we also list new books in the library catalog at <http://69.63.217.17/C10080/OPAC/Search/NewTitles.aspx>. If you would like us to hold a book for you to check out, just give us a call at 513.946.5300.

## Last Notice: Subscriber Renewals

Thanks to everyone who has renewed for 2013. You have another year of access to library privileges, including the ability to borrow books, attend CLEs at low or no cost, use online legal information sources, and more. If you haven't renewed yet, you will receive one more statement in the coming week. We do suspend all subscriber privileges for anyone not paid as of February 28. Questions? Please contact [Mary Jenkins](mailto:Mary.Jenkins@hcll.org).

## CALI Lessons

Do you remember CALI lessons from law school? Around since the early 1980s and in use in almost every US law school, CALI (the Center for Computer-Assisted Legal Education) offers web-based tutorials on a variety of legal subjects known as CALI Lessons.

We now offer this service to our subscribers and county officials. There are nearly 1,000 CALI lessons on a wide range of topics, including practice areas and legal research. To access CALI Lessons at the Law Library, look for it under Practical Materials on the desktop on the machines in the computer lab or ask a librarian for assistance.

## Subscriber Benefits

All subscribers have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for up to 6 weeks at a time

Access to extensive electronic databases from the Law Library, including LexisNexis, Shepards', CCH Omnitax, CCH Human Resources Group, and CCH Business Group resources, Hein Online Law Journals and Federal Register, and over 70 Aspen / LOISLaw treatises in 16 substantive areas

Wireless network throughout the Law Library

Polycom videoconferencing

5 meeting rooms with speaker phones

Professional reference service by our law librarians, available via e-mail, telephone, and in person

Free document delivery by fax or e-mail of print and electronic materials

Inexpensive CLE seminars throughout the year, on legal research and substantive topics

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/ LOISLaw treatises and CCH Newsletters

## You and the Legal System: Social Security/SSI Disability

Attorney Steve Olden is our next speaker in the *You and the Legal System* series for the public. Mr. Olden will discuss Social Security/ SSI Disability on Friday, February 15 at noon at the Law Library. The program will focus on :

- How to qualify for disability
- How claims are decided

The program is free to the public. To register, call 513.946.5300.

Please note that this is not a CLE event; it is intended for the general public. However, attorneys are welcome to attend and may want to pass along the program announcement to clients, staff and community organizations. If you would like more information, please contact Laura Dixon-Caldwell at 513-946-5302.

*You and the Legal System* is brought to you as a public service by the Hamilton County Law Library, in conjunction with the Cincinnati Bar Association's Lawyer Referral Service.

Save the date for the next event in the *You and the Legal System* series: Robert Porter will discuss Taxes on March 15.



## Kentucky Resources

In addition to Kentucky statutes, Law Library subscribers have access to a variety of resources on Kentucky law. If you have questions about access to any of these resources, just call us at 513.946.5300.

Alcoholic beverage laws of Kentucky  
KFK1575.A29 K46

Appellate Practice in Kentucky / Sheryl G. Snyder, Griffin Terry Sumner, Matthew C. Blickensderfer  
KFK1280 .K4 V. 19

Baldwin's Ohio Kentucky lawyer's handbook, with forms  
KFK1730 .B34

Baldwin's Kentucky wills and trusts/ L. Rush Hunt and Lara Rae Hunt  
KFK1344 .H86

Caldwell's Kentucky form book/ Kevin P. Bucknam  
KFK1268 .C3

Civil Procedure forms (Kentucky)/ Leslie W. Abramson  
KFK1280 .K4 vol 11, 12

Criminal practice and procedure (Kentucky)/ Leslie W. Abramson  
KFK1280 .K4 vol. 8, 9

Kentucky business organizations, law and rules annotated  
KFK1405.A29 K46

Kentucky collections / William R. Mapother and Thomas L. Canary Jr.  
KFK1367 .C6 M36

Kentucky corporation law, with forms/ James C. Sieffert  
KFK1280 .K4 vol. 17

Kentucky criminal and traffic law manual  
KFK1761.A29 .K472

Kentucky divorce/ Richard A. Revell and Alan T. Slyn  
KFK1300 .A15

Kentucky driving under the influence law/ Stanley Billingsley and Wilbur M. Zeveryly  
KFK1497.8 K46

Kentucky employment and labor law: forms and practice manual/ David Leightty  
KFK1531 .L45

Kentucky evidence law handbook/ Robert G. Larson  
KFK1740 .L35

Kentucky law of damages / Ronald W. Eades  
KFK1395 .E18

Kentucky limited liability company: forms and practice manual/ Charles Fassler  
KFK1407 .5 .F37

Kentucky worker's compensation/ Norman E. Harned  
KFK1542 .H37

Trial handbook for Kentucky lawyers/ Thomas L. Osbourne  
KFK1738 .O83

In addition the books listed above, subscribers have onsite access to Kentucky cases, statutes, regulations, treatises and court rules on Lexis. We also offer onsite access to a variety of Kentucky Practice series treatises on Westlaw.



### Upcoming Events:

February 15: You and the Legal System: Social Security/SSI Disability

February 28: Lexis CLE

### February Holidays:

The Law Library will be closed:

Monday, February 18 in observance of Presidents' Day.



# February 2013 Law Library Newsletter

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ADDRESS CORRECTION REQUESTED

Hamilton County Law Library  
Hamilton County Courthouse  
1000 Main Street, Room 601  
Cincinnati, OH 45202