

Legal Insights

August 2021

Legal Insights is a newsletter of timely and practical legal information that we hope you can use in your professional and personal pursuits. Please contact your attorney at Nicola, Gudbranson & Cooper if you have any questions or comments or if you would like to suggest topics of interest for future issues.



NGC Attorneys Win \$10 Million Judgment in the Ohio Supreme Court

Nicola, Gudbranson & Cooper (NGC) attorneys [Tim Clements](#) and [Nick Dertouzos](#) sued and won a \$10 million judgment in the Ohio Supreme Court for 12

charters schools that were improperly denied grant funding by the Ohio Department of Education (ODE).

Clements and Dertouzos filed a writ of mandamus, an extra ordinary legal procedure that asks the Ohio Supreme Court to order the Ohio government to take some action. In this case, NGC attorneys convinced the Ohio Supreme Court that their clients had a clear legal right to the grants because they met the criteria established by the Legislature and that ODE had added and used improper criteria to deny them the grant dollars.

The Ohio Supreme Court ruled that ODE's grounds for denial were not justified by what the Ohio legislature intended when it established the grants. Those interested in reading more about the decision, *The State Ex Re. Horizon Science Academy of Lorain, Inc. v. Ohio Dept. of Edn.*, can find the Court's opinion [here](#).

NGC Attorneys Successfully Defend Accounting Firm from Multi-Million Dollar Lawsuit



NGC Attorneys [Richard Witkowski](#) and [Christopher Yingling](#) recently obtained summary judgment in favor of an accounting firm. The case dealt with a former client of the accounting firm who had perpetrated a multi-million dollar fraud against numerous wealthy investors. The plaintiffs were three of approximately forty-five investors who claimed they were defrauded of about \$50 million by the accounting firm's client.

The case arose out of a Ponzi scheme involving the purchase and sale of off-the-road, heavy-duty mining tires. The plaintiffs alleged that they had loaned \$2.8 million to the accounting firm's client to finance tire purchases, and the accounting firm's client never repaid them. The accounting firm's client pled guilty to criminal charges arising from the Ponzi scheme, and the plaintiffs sought to recover their losses from the accounting firm, which had prepared tax returns and compiled financial statements for the client. The plaintiffs sued the accounting firm for accounting malpractice, conspiracy, and fraud, claiming that they relied upon the financial statements and tax returns when they made the loans. The Court granted summary judgment in favor of the accounting firm and found that it was not responsible for the plaintiffs' losses.

This was the third case in which NGC Attorneys Witkowski and Yingling successfully defended the accounting firm against claims brought by various investors who alleged that they were defrauded by the accounting firm's client.



NGC School Law Group Provides Specialized Services to Education Clients

Nicola, Gudbranson & Cooper (NGC) offers its clients a range of sophisticated practice areas at the same firm, which enables us to better serve the varied needs of our clients. For example, NGC's [School Law Group](#) regularly draws upon the skills of NGC's business and real estate lawyers to assist with complex transactions in furtherance of our school clients' educational mission.

Recently, such collaboration has included the following matters:

- We combined our charter school and commercial real estate expertise to serve as borrowers' counsel for bond issue and bond refinance transactions that provided low-cost funds for our school clients to acquire and improve their classroom buildings and administrative offices.
- Our experienced construction attorneys have assisted numerous school clients with negotiating complex construction agreements for facility construction and renovation projects.
- NGC's real estate attorneys recently proposed a creative solution to a complex property title and land subdivision problem that threatened to derail the planned

To learn more about NGC's School Law Group and the benefits of the integrated approach it provides its education clients, contact Bruce Waterhouse at: waterhouse@nicola.com

What to Know About Ohio's New LLC Law

By [Matthew Stanley](#)



Earlier this year, the Ohio Revised Limited Liability Company Act (the "Revised Act") was signed into law by Governor Mike DeWine, became effective April 22, 2021, and will become applicable to Limited Liability Companies ("LLC(s)") on January 1, 2022. The Revised Act will be codified as Chapter 1706 of the Ohio Revised Code and completely replaces Chapter 1705—the current Ohio Limited Liability Company Act (the "Current Act"). The following is a list of the more prominent changes that LLC members should look out for or take advantage of going forward.

- **Standardized Required Provisions:** The Current Act provides a default rule in almost every section under Chapter 1705, "except as otherwise modified by the LLC's operating agreement" or "except as otherwise provided in the articles of organization." Section 1706.08 of the Revised Act removes this qualifying language and provides a comprehensive list of provisions that cannot be modified by an operating agreement (e.g., certain fiduciary duties, obligations to make capital contributions). This rule removes ambiguity as to the permissibility of certain clauses when drafting an Operating Agreement.
- **More Flexible Management Structures Permitted** The Current Act adopted the bifurcated approach to LLC governance as being either member-managed or manager-managed. The Revised Act adopts a more flexible approach by allowing the operating agreement to describe the management construct of the LLC. The Revised Act allows members to structure their LLC's governance in the manner that makes the most sense for them and their operations. For example, an LLC may now construct a governing body similar to a board of directors.
- **Fiduciary Duties:** Under the Current Act, the members of an LLC were bound by the fiduciary duties of loyalty, care, and good faith, and fair dealing. However, under the Revised Act, LLCs may eliminate all fiduciary duties except for the duty of good faith and fair dealing. This change may present situations where a member of an LLC may be able to pursue work with another company and even compete directly with the LLC. As such, passive investors in LLCs should carefully review exculpation provisions in operating agreements after passage of the Revised Act, as it may substantially limit an investor's recourse against an LLC's management team-based.
- **Penalty Provisions and Consequences:** The Revised Act provides members of an LLC greater flexibility of control by allowing them to create specific penalties and set forth certain consequences in its operating agreement for members upon the occurrence of certain events, or by simply breaching the operating agreement.
- **Cancellations Related to Statutory Agents:** One important new rule to look out for under the Revised Act is that starting in 2022, the Ohio Secretary of State will provide notice to registered LLCs (foreign or domestic) when it's determined it has failed to maintain a statutory agent or update the agent's contact information. If an LLC does not register a new agent or provide updated contact information for their present statutory agent to the Ohio Secretary of State within 30 days of the mailing of the notice, the articles of organization or foreign registration of the LLC will be canceled. Once canceled, an LLC will be required to pay a filing fee, apply for reinstatement, and update its statutory agent information.
- **Series Liability Protection:** The Revised Act allows an LLC to establish a "series" in which the assets of each series are protected from any claim against and/or liability incurred by another series or the LLC as a whole. The series concept is similar to a corporate parent/subsidiary relationship and should prove useful in the context of certain businesses such as investment funds.
- **Creditor Protections:** The Revised Act also allows an LLC to protect itself against a claim by the creditor of a member, where such a claim involves the member's interest in the LLC.
- **Claim Termination:** The Revised Act provides an LLC the ability to terminate claims by its creditors after a period has passed following its dissolution.

Because January 1, 2022, is the applicable date for the Revised Act, LLC owners have time to determine how these changes will help, challenge, or otherwise impact their businesses. While the Revised Act may not require immediate changes to the operating agreements of many LLCs, it offers increased flexibility and opportunities going forward.

This summary is intended to highlight only some of the more prominent aspects of the Revised Act. In addition, we expect future guidance on these new rules from the Governor's office, State Legislature, Secretary of State, and the Courts. However, the attorneys at Nicola, Gudbranson & Cooper, LLC are familiar with the Revised Act as it stands and its impact on businesses in Ohio. We will continue to monitor any further revisions to the Revised Act and are prepared to counsel you and your business on this important change to Ohio law as well as any additional business needs you may have.

Minor League Baseball Begins a New Era

By *Jim Juliano*



Since our last issue of Legal Insights, the restructuring of Minor League Baseball (MiLB) has been established, and the teams have started their seasons, including the July 4 fireworks! This is welcome news after MiLB's entire 2020 season was canceled in response to the global COVID-19 pandemic.

The new structure involves a franchise approach. In years past, the MiLB teams had developed a governing organization, the National Association ("NA"), that supervised the MiLB operations for all 160 teams. Effective as of February of this year, Major League Baseball's affiliated entity, the MLB Professional Development Leagues, LLC ("MLBPDL"), runs the show, and all MiLB owners are now franchisees.

The 120 or so MiLB teams under this new structure are playing in newly organized leagues and skill levels beginning with Low A, then High A, then AA, and finally AAA, before reaching the Majors.

The new approach is bringing a new set of challenges to the operation of MiLB teams. MLBPDL is developing new rules and regulations for a number of operation and infrastructure improvements, including more efficient travel schedules, wellness, nutrition, workout facilities, and clubhouse standards. Some of these rules resemble the NA system, some do not.

The best news is that MiLB teams are playing baseball again. Get your family together and go to a MiLB game. Have some fun!

About the Firm:

Nicola, Gudbranson & Cooper (NGC) provides practical, cost-effective legal solutions and sophisticated advice to business owners and executives, professionals, and governmental entities throughout Ohio, a tradition it has upheld since its founding in 1933 as Nicola & Horn.

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