

## message from partner in charge

In this update, we hope you will pay special attention to Pepper's new Fund Watch under the direction of Len Schneidman. This service will generate "real time" information sent to subscribers interested in the latest hedge and private-equity fund legal news.

You also will find employment law featured in this update, specifically related to workplace investigations. In addition to this printed article, we provide information online regarding our employment law content. A quick glance at [www.pepperlaw.com](http://www.pepperlaw.com) will bring a bounty of relevant information.

And finally, I hope you'll enjoy our back-page story, where we have featured a recent notable restructuring matter that helped one of our clients win a national award.

Barbara Rom  
313.393.7351  
[romb@pepperlaw.com](mailto:romb@pepperlaw.com)

## in this issue

- 1 **What to Do If an Employee Is Stealing from the Company**
- 2 **Pepper Launches New Fund Watch Service**
- 3 **Upcoming Events**
- 3 **Peppercast: Renewable Energy Developers, Investors Gain Tax Certainty**
- 4 **Pepper Hamilton Helps JC Jones & Associates Win National 'Turnaround' Award**

## What to Do If an Employee Is Stealing from the Company

*Watch for the Warning Signs and Conduct a Diligent Investigation*

Employers who suspect that an employee may be stealing from the company need to proceed cautiously to ensure they don't expose themselves to legal liability.

Companies should be on the lookout for possible warning signs that an employee is stealing, such as:

- frequent variances in cash balances
- inventory shortages
- noticeable changes in employee behavior, such as buying a new car or expensive clothing
- other employees' complaints about missing items.

An employer can choose to investigate theft claims with internal or external resources. Although an internal investigation will generally be less expensive, it will need to be conducted fairly by someone with the necessary expertise.

Whether the investigation is performed in-house or through an outside investigator, it should include the following steps:

- Prepare an outline for interviews with suspected employees and witnesses, anticipate difficult issues, and know the company's position if a worker refuses to cooperate – such as, whether refusal will subject an employee to discipline.
- In a unionized workplace, an employee has the right to have a union representative or co-worker present – but not a lawyer – during any interview that he or she reasonably expects would result in disciplinary action. Also, use of recording surveillance devices will need union approval and federal and state laws applying to wiretapping must be followed.
- Evaluate whether a polygraph will be required. The Employee Polygraph Protection Act allows the use

of polygraph exams in the workplace to assist in an ongoing investigation.

- Audit computer and financial records, and preserve documents and evidence such as computerized records, e-mails, and videos.
- Document all investigative steps taken, and make summaries of all interviews. The investigative report will be a key document if further legal action is considered.
- Maintain the chain of custody to restrict the handling of evidence, and to document the movement of physical evidence.

If the investigation leads to employee discipline or corrective action, review past disciplinary records and performance evaluations to see whether there are other incidents and warnings related to this employee. Research past disciplinary actions taken against other employees for the same or similar conduct to avoid claims of unfair treatment.

Finally, whether this is a first-time occurrence for a company or an ongoing problem, it is best to review – or, if necessary, create – policies and procedures to focus on loss prevention. Let employees know that acts of dishonesty are serious infractions. Advise workers that failure to report another employee's dishonesty also can be subject to discipline.

*Authors:*

*Robert C. Ludolph*  
313.393.7368  
ludolphr@pepperlaw.com

*Maureen Q. Dwyer*  
215.981.4149  
dwyerm@pepperlaw.com

## Pepper Launches New Fund Watch Service

Developments in 2007 – both legislative and administrative – are casting a long shadow over the tax treatment of private investment funds, their managers and sponsors. These include:

- The introduction in 2007 of a number of tax bills in Congress, including proposals relating to fund manager's "carried interests;" offshore deferred compensation; unrelated trade or business income for exempt fund investors, and publicly traded investment partnerships. Although none of these proposals were enacted in 2007, most, if not all of them, can be expected to reappear in 2008.
- An IRS inquiry into suspected tax abuses at hedge and private-equity funds focused on a number of areas of potential abuse, including:
  - proper filing of tax and information returns
  - proper payment of tax by fund managers
  - the flow of funds between onshore and offshore entities
  - improper classification of items of ordinary income such as capital gains
  - use of improper accounting methods.

In light of these developments and the fact that these issues will take months or years to final resolution, Pepper has established a complimentary "Fund Watch" service for hedge and private-equity funds. This service will endeavor to closely monitor these and any other legislative, judicial or regulatory developments relating to the taxation of private investment funds and their managers and sponsors.

I will personally lead the effort. I am a Pepper attorney with more than 30 years of experience in the area of hedge and private-equity fund taxation and the author of a recent treatise on *U.S. Taxation of Foreign Portfolio Investors – A Practical Guide to Taxation in the U.S. Capital Market*.

The objective of the Fund Watch is to closely monitor all relevant developments in the area of fund taxation and to make this information available on a "real-time" basis.

Pepper will provide timely e-mail alerts as significant developments occur and establish a fund “hotline” to answer your questions. In addition, Pepper posts relevant items on its Web site for easy reference. You can reach the fund hotline by calling 866.333.0648 or e-mailing [fundwatch@pepperlaw.com](mailto:fundwatch@pepperlaw.com).

If you are interested in receiving the Fund Watch electronic alerts, please contact Brian Dolan with your e-mail address at [dolanb@pepperlaw.com](mailto:dolanb@pepperlaw.com) or 215.981.4568.

*Author:*

*Leonard Schneidman  
617.956.4320  
[schneidmanl@pepperlaw.com](mailto:schneidmanl@pepperlaw.com)*

## Upcoming Events

The National Brownfields Conference

“Roadmap to Revitalization”

May 5 - 7, 2008

Detroit, Michigan

Associate Todd C. Fracassi from Pepper’s Environmental Practice will be presenting.

For more information or to register visit [www.brownfields2008.org/en/index.aspx](http://www.brownfields2008.org/en/index.aspx)

National Association of Seed and Venture Funds

September 10-12, 2008

Detroit Marriott Renaissance Center

Detroit, Michigan

Pepper is proud to sponsor the 15th Annual NASVF conference. Several Pepper partners will be presenting on a variety of topics.

For more information, visit <http://nasvf.org/nasvf/web.nsf/pages/achome.html>.



## Peppercast: Renewable Energy Developers, Investors Gain Tax Certainty

As concerns for the nation’s energy supply rise, the federal government periodically provides various incentives to encourage the use of renewable energy sources. Listen to a podcast with **Todd B. Reinstein**, partner with Pepper Hamilton’s Tax Practice Group in our Washington D.C. office, as he describes quality energy resources and the effect of Section 45 and Revenue Procedure 2007-65 on investors of renewable energy.

If you are interested in the latest updates in the world of tax, you can request to receive an electronic copy of our monthly *Tax Update* newsletter by e-mailing [podcasts@pepperlaw.com](mailto:podcasts@pepperlaw.com).

Listen today by visiting the tax section of Pepper’s podcenter at [www.pepperpodcasts.com](http://www.pepperpodcasts.com).

## Pepper Hamilton Helps JC Jones & Associates Win National ‘Turnaround’ Award

The M&A Advisor, a leading information services provider for executives in mergers and acquisitions, distressed investing, and related financial industries, honored JC Jones & Associates as a recipient of the “Turnaround Deal of the Year” in the manufacturing and distribution category.

The award recognizes the successful restructuring of Harman Stove Company, a manufacturer of wood, wood pellet and coal stoves, based in Halifax, Pennsylvania. JC Jones, a performance improvement and turnaround firm, worked closely on Harman’s restructuring with Pepper’s Detroit office, and Woodward Capital Advisors, a private investment banking firm based in Birmingham, Michigan.

Harman began experiencing distress in 2006, when a “perfect storm” of mild weather, falling oil prices, and cost increases for pellet fuel materials combined to sharply curtail consumer demand for Harman’s alternative heating products.

Rather than filing for bankruptcy, Harman worked with JC Jones, Pepper and Woodward Capital to position the company for a strategic sale by lowering costs, realigning

information systems, reducing working capital, negotiating with creditors and structuring a deal with Hearth & Home Technologies, a division of HNI Corporation.

A key factor in achieving the successful out-of-court workout was gaining the support of Harman’s secured and unsecured creditors. With estimated proceeds from an asset purchase agreement falling short of a full recovery for creditors, Pepper attorneys **I. William Cohen** and **Deborah Kovsky-Apap** created a Creditor Plan to address distributions and other creditor concerns. Corporate partner **Cuyler Walker** advised Harman on the overall business transaction with Hearth & Home Technologies.

“Avoiding the costs associated with bankruptcy by creating a consensual Creditor Plan maximized the company’s value, increased creditor recoveries, and proved to be in the best interests of all concerned,” said Cohen, a partner in Pepper’s corporate restructuring and insolvency group.

In addition to rescuing the business, the turnaround plan saved approximately 200 jobs in the Halifax, Pennsylvania area.

## Pepper Hamilton LLP Attorneys at Law

The material in this publication is based on laws, court decisions, administrative rulings and congressional materials, and should not be construed as legal advice or legal opinions on specific facts. The information in this publication is not intended to create, and the transmission and receipt of it does not constitute, a lawyer-client relationship. Please send address corrections to [phinfo@pepperlaw.com](mailto:phinfo@pepperlaw.com).

[www.pepperlaw.com](http://www.pepperlaw.com)

Berwyn | Boston | Detroit | Harrisburg | New York | Orange County | Philadelphia | Pittsburgh | Princeton | Washington, D.C. | Wilmington

© 2008 Pepper Hamilton LLP. All Rights Reserved.  
This publication may contain attorney advertising.