Introduction

INTRODUCTION
As we have done in January for the last six years, and again with the permission of the University of Miami School of Law Center for Continuing Legal Education, we will be posting to this list throughout the coming week highlights of the proceedings of the 37th Annual Philip E. Heckerling Institute on Estate Planning that is being held January 6-10, 2003 at the Fontainebleau Hilton Resort and Towers in Miami Beach, Florida.

Our on-site local reporters there in Miami this year will be identified as their reports are received and published:

We also will be posting the full text of this year's Reports on the ABA RPPT Section's Web site, as we have since the 2000 Institute. Those Reports can be found at URL http://www.abanet.org/rppt/meetings_cle/heckerling/home.html. In addition, each Report can also be accessed at any time from the ABA-PTL Discussion List's Web-based Archive at URL http://mail.abanet.org/archives/aba-ptl.html.
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Again this year a complete listing of the proceedings and speakers is available on the Institute's Web site. The URL for that site is http://www.law.miami.edu/heckerling. For those of you without access to the Web, here are the core parts of the schedule:

Scope of the Institute:

The Philip E. Heckerling Institute on Estate Planning is the nation's leading conference for estate planning professionals. It is designed for sophisticated attorneys, trust officers, accountants, insurance professionals, and financial planners who, through years of experience and practice, are familiar with the principles of estate planning. This year's program will provide the information you need to remain up-to-date on the latest developments in the estate planning field.

· A recent developments panel on Monday afternoon will guide you through the year's developments in estate, gift, and income taxation.
· The Tuesday morning program marks the beginning of our general session lectures. The lectures provide in-depth analysis of topics of timely interest to experienced estate planners, and are presented by some of the nation's leading authorities.
· Tuesday afternoon will include a panel focusing on estate, gift and generation-skipping planning and drafting issues in the new statutory environment.
· On Wednesday and Thursday afternoons, the Institute offers a wide

variety of workshops, panel discussions, and case studies, that will examine and provide practical guidance on sophisticated estate planning techniques.

· Finally, this year's Institute once again includes our popular Fundamentals Program, designed to be of interest to not only entry-level practitioners, but also to more experienced planners who would benefit from a thorough review of these topics central to the estate planning process.

As the largest gathering of estate planners in the country, the Institute offers a unique opportunity to exchange ideas, to network, and to review the latest in technology, products and services displayed by over 100 vendors in an exhibit hall dedicated entirely to the estate planning industry. We hope that you will join us in Miami Beach January 6-10, 2003, to take advantage of this unique event.

THE INSTITUTE 2003 FACULTY:

Roy M. Adams
Sonnenschein Nath & Rosenthal

Steve R. Akers
Bessemer Trust

Russell G. Allen
JP Morgan

Albert S. Barr, III
Law Office of Albert S. Barr, III LLC

Susan T. Bart
Sidley Austin Brown & Wood

Martin E. Basson
Internal Revenue Service Estate and Gift

Edward Jay Beckwith
Baker & Hostetler LLP

Norman J. Benford
Greenberg Traurig

Jonathan G. Blattmachr
Milbank, Tweed, Hadley & McCloy LLP

Alexander A. Bove, Jr.
Law Offices of Alexander A. Bove

Karen E. Boxx
University of Washington

Lawrence Brody
Bryan Cave LLP

J. Donald Cairns
Spieth, Bell, McCurdy & Newell, L.P.A.
Natalie B. Choate
Bingham Dana LLP

Richard B. Covey
Carter, Ledyard & Milburn

David J. Dietrich
Dietrich & Cole

S. Stacy Eastland
Goldman, Sachs & Co.

Mary Lou Edelstein
Internal Revenue Service Appeals

Timothy P. Flaherty
Silver Creek SV, LLC

Paul N. Frimmer
Irell & Manela LLP

Jon J. Gallo
Greenberg, Glusker, Fields, Claman
Machtinger & Kinsella LLP

Leslie C. Giordani
Giordani, Schurig, Beckett & Tackett, LLP

Joseph G. Gorman, Jr.
Sheppard, Mullin, Richter & Hampton LLP

Carol A. Harrington
McDermott, Will & Emery

Ellen K. Harrison
Shaw Pittman

Dan T. Hastings
Skadden, Arps, Slate, Meagher & Flom LLP

Joseph G. Hodges, Jr.
Attorney at Law

Edmond M. Ianni

Wilmington Trust Company

Lawrence P. Katzenstein
Thompson Coburn LLP

William Lapiana
New York Law School

John B. Lawson
Insurance Distributors International (Bermuda) Ltd.

Ralph E. Lerner
Sidley Austin Brown & Wood LLP

Mary Ann Mancini
Steptoe & Johnson LLP

Daniel H. Markstein, III
Maynard, Cooper & Gale, P.C.

Carlyn S. McCaffrey
Weil, Gotshal & Manges LLP

Jerry J. McCoy
Law Office of Jerry J. McCoy

Judith M. McCue
McDermott, Will & Emery

Louis A. Mezzullo
Mezzullo & Guare, PLC

John R. Price
Perkins Coie LLP

John W. Porter
Baker & Botts, L.L.P.

Susan Porter
United States Trust Company

Richard B. Robinson
Lentz, Evans & King P.C.

Pam H. Schneider
Gadsden Schneider & Woodward LLP

Howard M. Zaritsky
Attorney at Law

Henry Steinway Ziegler
Fiduciary Trust Company International
THE PROGRAM SCHEDULE:
Sunday, January 5
Registration

Monday, January 6
OPTIONAL PRE-CONFERENCE FUNDAMENTALS PROGRAM
ERISA for Estate Planners - Natalie B. Choate

Introductory Remarks - Tina Portuondo, Institute Director

Recent Developments in Estate, Gift and Income Taxation 2002
Carlyn S. McCaffrey
Dan T. Hastings
Howard M. Zaritsky
Materials by Richard B. Covey and Dan T. Hastings

Tuesday, January 7
Adventures in Life Insurance! (And You Thought It Would Be Boring)
Jonathan G. Blattmachr

Turning the Tables: When Do the IRS Actuarial Tables Not Apply?
Lawrence P. Katzenstein

What To Do With Art and Other Valuable Stuff
Ralph E. Lerner

Charitable Lead Trusts Re-Examined: The Dawning of a Golden Age?
Edward Jay Beckwith

Drafting After EGTRRA (and Other Recent Developments):
How Different Is It?
Pam H. Schneider
Paul M. Frimmer
Carol A. Harrington

Did They Get It Right? The Final Minimum Distribution Rules
Louis A. Mezzullo

State Law Developments Searching for Revenue and Other Quests
William Lapiana

Wednesday, January 8
Worth the Effort Even Beyond the Grave An Update of Post-Mortem
Planning Issues
Steve R. Akers

From the Far Bank of The River Styx: Post-Mortem Problems and

Opportunities With Family Partnerships
Daniel H. Markstein, III

Question & Answer Session
Carlyn S. McCaffrey
Dan T. Hastings
Howard M. Zaritsky

FUNDAMENTALS PROGRAM Estate Planning in a Low Interest Rate Environment (Runs concurrently with the Special Sessions)
Lawrence P. Katzenstein

Special Sessions I
I-A CASE STUDY The 529 Drop-Kick Through the Financial Goalposts of Education Savings
Susan T. Bart

I-B Our Best Ideas That We Are Willing To Talk About
S. Stacy Eastland
Jonathan G. Blattmachr
Ellen K. Harrison

I-C Charitable Planning: What’s on Your Desk?
Jerry J. McCoy
Edward Jay Beckwith
Ralph E. Lerner

I-D Fielding the Throwback and Other Considerations for NRAs With U.S. Heirs
Henry Steinway Zeigler

I-E Ethics as Part of the Daily Mix Has Enron Raised the Bar?
Joseph G. Gorman, Jr.
J. Donald Cairns
Judith W. McCue

Special Sessions II
II-A CASE STUDY Moving the Immovable Protecting Real Estate From Creditors
Alexander A. Bove, Jr.

II-B Transfer Tax Audit Issues: What's Hot, What's Not
Norman J. Benford Mary Lou Edelstein
Martin E. Basson John W. Porter

II-C Advanced Investments in Life Insurance Strategies Use of Hedge Funds in Offshore Private Placement Life Insurance
Lawrence Brody
Leslie C. Giordani
Timothy P. Flaherty

John B. Lawsond

II-D Back to the Future: Carryover Basis in 2010
William Lapiana
Susan Porter

II-E Ethics as Part of the Daily Mix Has Enron Raised the Bar?
(Repeat of Session I-E)
Joseph G. Gorman, Jr.
J. Donald Cairns
Judith W. McCue

Thursday, January 9
Estate Planning With GRATs and Near-GRATs Opportunities and Pitfalls of a Cloudy Crystal Ball
John R. Price

Unwinding the Discount Entity: What Happens When the Family Wants To Take Their Share and Run?
Richard B. Robinson

What Do You Mean, Subpoena? I'm a Lawyer!
Russell G. Allen

One Percent, Two Percent, Three Percent, Four No Matter What
12:15 p.m. You Pay, the Bene Wants More
Susan Porter

FUNDAMENTALS PROGRAM Everything You Ever Wanted To Know About Generation-Skipping But Were Afraid To Ask
(Runs concurrently with the Special Sessions)
Jon J. Gallo

Special Sessions III
III-A CASE STUDY Unwinding Discount Entities
Richard B. Robinson

III-B Transfer Tax Audit Issues: What's Hot, What's Not
(Repeat of Session II-B)
Norman J. Benford
Mary Lou Edelstein
Martin E. Basson
John W. Porter

III-C Post-Mortem Planning in Transition
Steve R. Akers

III-D Fiduciary Firewalls: A Look at Blind Trusts
Edmond M. Ianni

III-E Timely Tech Topics & Ticklers "Must Have" Software,
"Must Know" Technology, and "Must Do" Stuff
Joseph G. Hodges, Jr.
Albert S. Barr, III

Special Sessions IV
IV-A CASE STUDY Post-Mortem Planning With Partnerships
Daniel H. Markstein, III

IV-B GRATs
John R. Price

IV-C The FLP Side: Fiduciary Liability Potential
Russell G. Allen
Susan Porter

IV-D Pleasing Mother Earth and the IRS: Using Conservation
Easements To Save Open Space, Income and Estate Taxes
David J. Dietrich

IV-E Split-Dollar Life Insurance
Lawrence Brody
Jonathan G. Blattmachr
Mary Ann Mancini

Friday, January 10
The Durable Power of Attorney: Why You Should Give More
Attention to Estate Planning's Stepchild
Karen E. Boxx

Terrorism or Its Prospect The Impact on Estate Planning
Roy M. Adams

CASE STUDY Wrapping It Up Applying What We Have Learned
Louis A. Mezzullo

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PROGRAM

This e-mail includes the program and the summaries from the 37th Annual Heckerling Institute on Estate Planning.
As we have done in January for the last six years, and again with the permission of the University of Miami School of Law Center for Continuing Legal Education, we will be posting to this list throughout the coming week highlights of the proceedings of the 37th Annual Philip E. Heckerling Institute on Estate Planning that is being held January 6-10, 2003 at the Fontainebleau Hilton Resort and Towers in Miami Beach, Florida.

A complete listing of the proceedings and speakers is available on the Institute's Web site.
The URL for that site is http://www.law.miami.edu/heckerling.
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37TH ANNUAL
HECKERLING INSTITUTE ON ESTATE PLANNING

Sunday, January 5
12:00 – Registration
6:00 p.m.
Monday, January 6
8:00 a.m. Registration
8:00 – Complimentary Continental Breakfast
9:00 a.m.
9:00 – *OPTIONAL PRE-CONFERENCE FUNDAMENTALS PROGRAM –*
10:30 a.m. / ERISA for Estate Planners
10:45 a.m. –
12:15 p.m. Natalie B. Choate
Everything you need to know about estate planning for qualified retirement benefits except the minimum distribution rules: the types of retirement plans (defined benefit, Keogh, 401(k), ESOPs), and implications of each for your client's estate plan. Navigating the sea of plan administration: information you need to know and how to get it, spousal rights under federal law, prohibited transactions, plan-owned life insurance, contrast between qualified plans and IRAs (and which one is better for whom: the "Rollover Roadmap"). Special income tax deals for certain people – don't let your client miss out. Estate tax issues: the latest on valuation and available discounts. Disclaimers: be sure you know what you're doing when you adopt a "disclaimer plan" for retirement benefits. With forms, case studies, and specific planning ideas.
10:30 – Break
10:45 a.m.
2:00 – Introductory Remarks
2:10 p.m.
Tina Portuondo, *Institute Director*
2:10 – Recent Developments in Estate, Gift and Income Taxation – 2002
3:30 p.m. Part One
Carlyn S. McCaffrey
Dan T. Hastings

Howard M. Zaritsky
Materials by Richard B. Covey and Dan T. Hastings
3:30 – Break
3:45 p.m.
3:45 – Recent Developments in Estate, Gift and Income Taxation – 2002
5:15 p.m. Part Two
6:00 – Complimentary Reception for Registrants
7:00 p.m.

Tuesday, January 7

8:00 – Complimentary Continental Breakfast
9:00 a.m.

9:00 – A d v e n t u res in Life Insurance! (And You Thought It Would Be Boring)
9:45 a.m.
Jonathan G. Blattmachr

This presentation will cover how to obtain income tax "deductions" for term premiums paid, how to avoid GST tax for a life insurance trust without using GST tax exemption, how to double the power of *Crummey* withdrawal rights, and how to plan with split-dollar life insurance.

9:45 – Turning the Tables: When Do the IRS Actuarial Tables Not Apply?
10:30 a.m.
Lawrence P. Katzenstein

This presentation will examine when departures from the IRS actuarial tables are permitted or required, including situations of under-productive property and increased risk of mortality, and will consider the implications of recent decisions permitting departures from the tables in valuing the right to receive state lottery payments.

10:30 – Break
10:45 a.m.
10:45 – What To Do With Art and Other Valuable Stuff
11:30 a.m.
Ralph E. Lerner

When a client owns valuable collectibles it can require unique planning techniques to save taxes. This presentation will address income tax, gift tax, and estate tax planning for collectibles, valuation issues, IRS guidelines and procedures, and the complications caused by a client's emotional attachment to his or her "stuff"!

11:30 a.m. – Charitable Lead Trusts Re-Examined: The Dawning of a Golden
12:15 p.m. Age?
Edward Jay Beckwith

In light of recent changes, both in tax laws and the financial markets, it is likely the charitable lead trust will become even more popular over the balance of this decade. This session will examine the factors contributing to this likely trend as well as the more creative uses and abuses of charitable lead trusts.

12:15 – Lunch Break
2:00 p.m.
2:00 – Drafting After EGTRRA (and Other Recent Developments):
3:30 p.m. How Different Is It?
Pam H. Schneider
Paul M. Frimmer
Carol A. Harrington

The panelists will discuss how the language in their documents has changed (or not changed, as the case may be) in light of the purported "repeal of the death tax," technical GST tax changes included in EGTRRA, and other recent developments. The focus will be on specific will and trust provisions.

3:30 – Break
3:45 p.m.

3:45 – Did They Get It Right? The Final Minimum Distribution Rules
4:30 p.m.
Louis A. Mezzullo

A discussion of the final regulations dealing with required minimum distributions, including planning issues and problem areas.

4:30 – State Law Developments – Searching for Revenue and Other
5:15 p.m. Quests
William Lapiana

This program will discuss recent developments in state law, both decisional and legislative, with a special emphasis on state responses to the elimination of the federal state death tax credit. If time permits, mention will also be made of non-tax developments.

Wednesday, January 8

8:00 – Complimentary Continental Breakfast
9:00 a.m.

9:00 – Worth the Effort Even Beyond the Grave – An Update of Post-Mortem
9:45 a.m. Planning Issues
Steve R. Akers

The extremely broad range of post-mortem planning strategies can be daunting. A good planner must be knowledgeable of a wide array of individual and fiduciary income tax, gift tax, estate tax, and GSTT planning traps and strategies. This session will address important planning issues and current developments.

9:45 – From the Far Bank of The River Styx: Post-Mortem Problems and
10:30 a.m. Opportunities With Family Partnerships
Daniel H. Markstein, III

This presentation will focus on planning for the payment of estate tax, funding charitable and other bequests, and dealing with existing and newly created partnerships after the death of the propertied spouse.

10:30 – Break
10:45 a.m.

10:45 a.m. – Question & Answer Session
12:15 p.m.
Carlyn S. McCaffrey
Dan T. Hastings
Howard M. Zaritsky

12:15 – Lunch Break
2:00 p.m.

2:00 – *FUNDAMENTALS PROGRAM* – Estate Planning in a Low Interest
3:30 p.m. / Rate Environment *(Runs concurrently with the Special Sessions)*
3:45 –
5:15 p.m. Lawrence P. Katzenstein

What estate planning techniques work best when interest rates are low? What techniques work better when interest rates are high? What techniques are unaffected by interest rates? This program will examine these questions and look at the effect of varying interest rates on a variety of estate planning techniques.

2:00 – Special Sessions I
3:30 p.m.

I-A – *CASE STUDY* – The 529 Drop-Kick Through the Financial Goalposts of Education Savings

Susan T. Bart

Learn how to create a game plan for education savings by combining 529 savings accounts with other techniques from your playbook and how to

implement a successful 529 play by selecting the right state program, using trusts and other entities as account owners, and coordinating the estate plan.

I-B – Our Best Ideas That We Are Willing To Talk About

S. Stacy Eastland

Jonathan G. Blattmachr

Ellen K. Harrison

The panelists will discuss their best ideas with respect to estate planning, charitable planning, insurance planning, option planning, and post-mortem planning.

I-C – Charitable Planning: What's on Your Desk?

Jerry J. McCoy

Edward Jay Beckwith

Ralph E. Lerner

This charitable "Hot Topics" session will review recent developments and discuss questions previously submitted by attendees. Registrants will be invited to submit noteworthy planning problems in advance of the session.

I-D – Fielding the Throwback and Other Considerations for NRAs With U.S. Heirs

Henry Steinway Zeigler

An increasing number of high net worth non-U.S. families have at least one child who is a U.S. taxpayer. This presentation will address some of the opportunities and pitfalls for multinational families with U.S. heirs, with emphasis on foreign vs. domestic trusts and entities and how to save U.S. taxes for the heirs after the death of the nonresident alien parent.

I-E – Ethics as Part of the Daily Mix – Has Enron Raised the Bar?

Joseph G. Gorman, Jr.

J. Donald Cairns

Judith W. McCue

A discussion of many situations that arise regularly in an estate planner's practice, with a focus on what, from a practical viewpoint, should be done, and how to do it.

3:30 – Break

3:45 p.m.

3:45 – Special Sessions II

5:15 p.m.

II-A – *CASE STUDY* – Moving the Immovable – Protecting Real Estate From Creditors

Alexander A. Bove, Jr.

A discussion and case study illustrating creative solutions to the perennial dilemma faced by estate and asset protection planners: How to protect investment real estate from creditors without losing the benefits of ownership for the client and her family.

II-B – Transfer Tax Audit Issues: What's Hot, What's Not

Norman J. Benford Mary Lou Edelstein

Martin E. Basson John W. Porter

This panel, representing the views of the practitioner and Internal Revenue Service, will take a practical approach to the discussion of significant current issues in estate, gift, and generation-skipping tax audits, including valuation matters (discounts, present interest qualification, built-in gain, impact of post-death events, use of appraisers, adequate disclosure rules, and defined

value issues); procedural considerations (tips for effective appellate practice, fast track mediation, burden of proof issues); and *Graegin* notes and other deduction issues.

II-C – Advanced Investments in Life Insurance Strategies – Use of Hedge Funds in Offshore Private Placement Life Insurance

Lawrence Brody Leslie C. Giordani

Timothy P. Flaherty John B. Lawson

This panel will discuss the use of hedge funds in private placement variable life insurance policies, issued by non-U.S. based insurance carriers. The panel will discuss attributes of hedge funds and why they and other tax inefficient investments may make sense in a variable life policy, the U.S. tax considerations of variable life insurance, including diversification and investor control issues, the advantages and disadvantages of private placement life insurance, the advantages and disadvantages of private placement variable life insurance offered by non-U.S. insurance carriers, and the special issues involved in the purchase by U.S. persons of policies issued by foreign carriers.

II-D – Back to the Future: Carryover Basis in 2010

William Lapiana

Susan Porter

This program will discuss the carryover basis provision scheduled to come into effect in 2010, especially what can and should be done now to plan and draft for the possible future.

II-E – Ethics as Part of the Daily Mix – Has Enron Raised the Bar? (Repeat of Session I-E)

Joseph G. Gorman, Jr.

J. Donald Cairns

Judith W. McCue

Thursday, January 9

8:00 – Complimentary Continental Breakfast
9:00 a.m.

9:00 – Estate Planning With GRATs and Near-GRATs – Opportunities and
9:45 a.m. Pitfalls of a Cloudy Crystal Ball

John R. Price

Despite important recent developments, including the *Walton* decision, the taxation of GRATs and near-GRATs remains a work-in-progress, with continuing uncertainty regarding some critical issues. This presentation will provide a road map of the tax issues, discuss the opportunities and pitfalls of GRATs, sales to IDITs, and private annuities, and review the issues that should be considered in deciding whether to use one of these popular techniques.

9:45 – Unwinding the Discount Entity: What Happens When the Family
10:30 a.m. Wants To Take Their Share and Run?

Richard B. Robinson

The use of valuation discount planning entities such as FLPs can produce major income tax headaches when one or all of the family wants out. This program will identify income tax problems and provide exit strategies to minimize the income tax costs to the family.

10:30 – Break
10:45 a.m.

10:45 – What Do You Mean, Subpoena? I'm a Lawyer!
11:30 a.m.
Russell G. Allen
State law rules governing civil discovery of attorney-client communications and attorney work product vary significantly. Federal law, different still, applies in most of our tax controversies. This program will provide a primer for trusts and estates lawyers, focusing on problems commonly encountered in estate planning and administration.
11:30 a.m. – One Percent, Two Percent, Three Percent, Four – No Matter What
12:15 p.m. You Pay, the Bene Wants More
Susan Porter
This presentation will cover practical problems facing professional fiduciaries when exercising discretionary powers pursuant to either local law or the governing instrument.
12:15 – Lunch Break
2:00 p.m.
2:00 – *FUNDAMENTALS PROGRAM* – Everything You Ever Wanted To
3:30 p.m. / Know About Generation-Skipping But Were Afraid To Ask
3:45 – *(Runs concurrently with the Special Sessions)*
5:15 p.m.
Jon J. Gallo
This presentation is designed for estate planners with a working knowledge of estate and gift taxation, but who are uncomfortable when faced with planning and drafting multi-generational estate plans. Special attention will be given to interrelated marital deduction/generation-skipping drafting issues, as well as planning and drafting the multi-generational life insurance trust.
2:00 – Special Sessions III
3:30 p.m.
III-A – *CASE STUDY* – Unwinding Discount Entities
Richard B. Robinson
Using typical client fact patterns, this session will examine income tax traps and pitfalls when unwinding family limited partnerships and family corporations that were used to obtain valuation discounts.
III-B – Transfer Tax Audit Issues: What's Hot, What's Not
(Repeat of Session II-B)
Norman J. Benford Mary Lou Edelstein
Martin E. Basson John W. Porter
III-C – Post-Mortem Planning in Transition
Steve R. Akers
This workshop will focus on post-mortem planning issues during the transition years of the "phase out" of the estate tax.
III-D – Fiduciary Firewalls: A Look at Blind Trusts
Edmond M. Ianni
Blind Trusts, originally (and still) utilized by public officials to avoid conflicts of interest, are widely used in the private sector. In an environment of heightened

corporate scrutiny and regulation, blind trusts continue to provide a wealth management solution for business insiders. This presentation will examine the practical uses and benefits of blind trusts, particularly in the corporate sector. We will review how blind trusts can accomplish different wealth management strategies and how to structure them.
III-E – Timely Tech Topics & Ticklers – "Must Have" Software, "Must Know" Technology, and "Must Do" Stuff

Joseph G. Hodges, Jr.
Albert S. Barr, III
A summary and an overview of "must have" software; effective (and easy to set up and administer) professional web sites; obtaining client information without having to meet with the client; the current state of data gathering and document assembly programs; the future of e-filing of estate planning and administration documents; and lots of helpful tech tips for both large and solo/small firms along the way.

3:30 – Break
3:45 p.m.
3:45 – Special Sessions IV
5:15 p.m.

IV-A – *CASE STUDY* – Post-Mortem Planning With Partnerships
Daniel H. Markstein, III
Several case studies will be used to examine problems and opportunities that may arise with post-mortem planning for family partnerships.

IV-B – GRATs
John R. Price
This session will focus on hypotheticals that involve the consideration of settled and unresolved tax issues.

IV-C – The FLP Side: Fiduciary Liability Potential
Russell G. Allen
Susan Porter
Knowing that the fiduciary must act reasonably for the benefit of all beneficiaries and may not delegate to others, how is the fiduciary to carry out responsibilities to avoid incurring liability when today's beneficiaries' expectations are often in conflict and the financial marketplace is ever-changing? This discussion will examine the effect of the USA Patriot's Act on confidentiality, transition problems with the Principal & Income Act (including significant state law variations), discretionary distribution controversies, investment-related matters (including the issues of what is concentration and the definition of diversification), tax-related conflicts, and the attorney-client and attorney work product discovery controversies.

IV-D – Pleasing Mother Earth and the IRS: Using Conservation Easements To Save Open Space, Income and Estate Taxes
David J. Dietrich
This program will examine federal regulatory and selected state law requirements for conservation easements to achieve charitable income, federal estate

and gift tax planning. The program will give examples of specific conservation easement language, will discuss practical drafting considerations for urban and rural open space easements, and will emphasize the integration of conservation easement planning with estate and income tax planning.

IV-E – Split-Dollar Life Insurance
Lawrence Brody
Jonathan G. Blattmachr
Mary Ann Mancini
This panel will consider the provisions of the long awaited proposed regulations on the treatment of split-dollar arrangements and possible planning techniques.

Friday, January 10

8:00 – Complimentary Continental Breakfast
9:00 a.m.
9:00 – The Durable Power of Attorney: Why You Should Give More
9:45 a.m. Attention to Estate Planning’s Stepchild
Karen E. Boxx

Durable powers of attorney are extremely common and deceptively simple. They create a unique yet ill-defined fiduciary role, somewhere between an agent and a trustee. This presentation will cover the scope of the fiduciary role, the p roblems and possible solutions re g a rding the document's eff e c t i v e n e s s , including multistate use, and recent statutory trends.

9:45 – Terrorism or Its Prospect – The Impact on Estate Planning
10:30 a.m.
Roy M. Adams

Since the terrible day of September 11, 2001, our world is no longer the same and neither are the concerns and needs of many of our clients. Many have reconsidered where they live, where they own property, and what types of trusts they will use. This delicate topic must be addressed because it is on the minds of so many with whom we counsel. In this program, Roy Adams will analyze the major issues we need to address in light of the new fears that exist, and will also look at how we can help ease some of those fears through prudent planning.

10:30 – Break
10:45 a.m.
10:45 a.m. – *CASE STUDY* – Wrapping It Up – Applying What We Have Learned
12:00 p.m.
Louis A. Mezzullo

One or more case studies will be used to demonstrate the practical application of many of the planning techniques discussed during the Institute.

GENERAL INFORMATION:

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Eugene P. Zuspann II

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Report #1- Software Vendors

As we have done in January for the last six years, and again with the permission of the University of Miami School of Law Center for Continuing Legal Education, we will be posting to this list throughout the coming week highlights of the proceedings of the 37th Annual Philip E. Heckerling Institute on Estate Planning that is being held January 6-10, 2003 at the Fontainebleau Hilton Resort and Towers in Miami Beach, Florida.

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REPORT NO. 1 - Tuesday, January 7, 2003

The following report has been filed concerning the software vendors who are in the Exhibit Hall this year and other technology news by our on-site Reporter, Jason Havens Esq. of Destin, Florida, the creator of the Legal Research for Estate Planners Web site (http://www.jasonhavens.net):

This report covers the software and some other vendors who are exhibiting at the Institute. The number of software and other vendors at the 2003 Institute has grown to 106. The software vendor list this year includes, in alphabetical order:

Advance Choice/Docubank
Advanced Planning Solutions, LLC
BNA/Tax Management, Inc.
Brentmark Software, Inc.
CCH INCORPORATED
CEPAC Communications
Connect2A.com
Crescendo Interactive, Inc.
Datatech Software
Eidelman Associates/WINDRAFT
Estate Works

EVP Systems, Inc.
Fast-Tax Trust Services
FASTER Systems, LLC
The Lackner Group, Inc.
LAWGIC, LLC
LexisNexis
Lynx Software
PG Calc Incorporated
Power Presentations
ProBATE Software
ProDoc
Schumacher Publishing, Inc.
WealthCounsel, LLC
West
Zane & Associates, Inc.
zCalc, LLC

Following are the highlights from the "first round" among the software and other vendors. These highlights are generally classified in categories that will hopefully prove helpful to list members. Additional "rounds" will follow.

A. CALCULATION SOFTWARE:

1. Brentmark: Brentmark has an exciting new software that "does a comprehensive estate plan" known as the Kugler Estate Analyzer (TM). The program uses three steps: client information, assets & liabilities, and techniques. The program combines Brentmark's Estate Planning QuickView and Estate Planning Tools capabilities in that the user can perform calculations and illustrate planning techniques with flowcharts. However, the new Kugler program includes "Inter-related Planning Techniques" such as GST trusts, QPRTs, GRATs, CRTs, CLATs, sales to grantor trusts, FLPs, testamentary charitable gifts, and more. The Kugler Estate Analyzer (TM) is advertised at a price of $595 with a $199 annual maintenance fee.

Brentmark also offers the Pension & Roth IRA Analyzer, which performs minimum required distribution calculations and many others. Brentmark has introduced the Asset Transfers System, which tracks transferring and retitling assets for a client. The Asset Transfers System will populate documents with the asset information entered once for a client.

Brentmark has also taken over the ownership and future support and maintenance of the US Trust EPlan and Form 706 programs.

Finally, Brentmark has developed its PFP Notebook (TM), which allows the user to create a personal financial plan for a client and can interact with other
Brentmark programs.

2. CCH: CCH has also introduced a comprehensive program known as CCH

ViewPlan Advanced (TM). This program integrates the features of the basic CCH ViewPlan, Beneview, and Factuary modules. The user can calculate and illustrate more than twenty different asset transfer techniques including CRTs, NIMCRUTs, CLTs, GRTs, QPRTs, and SCINs. The graphical flowcharts are accompanied by built-in calculation logs. The program works seamlessly with other CCH products such as Enteract (TM) financial planning and Pro System fx (R) tax software programs, and uses Microsoft standards.

3. Thomson: Thomson has brought together various products and services. Beyond West, Thomson now includes the Zane products: FAS (fiduciary accounting), 706, 1041, 709, and Fiduciary Calendar. Thomson also offers the RIA products, including Warren, Gorham & Lamont's superb treatises and the various journals of that group, including Estate Planning.

4. zCalc: zCalc's Tool Box illustrates most estate planning techniques. Unlike other programs, zCalc can be customized by changing the Tool Box templates or the actual functions in the function library. zCalc is still one of the most reasonable programs of its kind at $295 for the initial purchase and $150 per year thereafter.

B. DRAFTING SOFTWARE:

1. WealthCounsel: WealthCounsel is again a popular booth. The WealthCounsel drafting system includes various practice systems built on the HotDocs (R) document assembly platform. WealthCounsel includes more practice systems than most other drafting systems, from trusts to FLPs to a comprehensive charitable system that even features private foundations. WealthCounsel membership also includes a list serve, continuing education, and an impressive knowledge base. For all of this, users pay a rather costly price. An Institute special "competitive upgrade" advertisement for switching drafting systems offers three payment options: (a) $590 for 20 months; (b) $2,900 down plus $390 per month for 12 months; or (c) $6,900 paid in full for the first year.

2. Lawgic: Lawgic has been revived from the brink of bankruptcy! Bruce Grewell, the new "captain" of Lawgic, intends to ensure the survival of the Lawgic program by updating the California, D.C., Florida, Georgia, Maryland & Massachusetts products. It is anticipated that the excellent attorneys at Holland & Knight will update all such products in the future. Lawgic offers wills, disability planning documents, and a number of trusts (from revocable inter vivos trusts to ILITs to various grantor trusts), as well as ancillary documents and client letters. Lawgic states that it will add states in the near future, including New York and Virginia.

3. ProDoc: ProDoc offers Ronald Lipman's will and trust forms, the Florida Lawyer Support Services, Inc. (FLSSI) probate and guardianship forms, and probate management and accounting software as a part of its Estate Planning Library, which is advertised at $95 per month. Other practice systems are available. The newest feature of ProDoc is the Small Office Suite, which is essentially a case management program (somewhat similar to Amicus Attorney

or PCLaw) that affords contact management, calendaring, and time billing capabilities.

4. Eidelman Associates: EP Expert (TM) uses an underlying engine, WinDraft, to produce documents. A user can build his or her own document assembly system with his or her own forms. This program also works with DOCS Open or iManage document assembly software.

5. Datatech: ThinkDOCS also allows a user to build his or her own document assembly system.

C. TRUST ACCOUNTING & RELATED ADMINISTRATION SOFTWARE:

1. Thomson: Fast-Tax gives the trust administration user the ability to produce tax forms. Fast-Tax interacts with Zane fiduciary accounting software, which is also part of the Thomson group.

2. ProBATE Software: ProBATE Software offers fiduciary accounting and tax compliance software, as well as a new digital workflow program through its new related company, Ike.com.

3. FASTER Systems, LLC: FASTER software offers a single-entry system for fiduciary accounting.

4. EstateWorks: EstateWorks is a web-based system that tracks and assists with the preparation of estate administration cases. Users can "click" through any part of the program and can see at a glance the status of cases and a checklist for each case. EstateWorks generates documents and merges data into MS Word and Adobe files.

5. Advanced Planning Solutions, LLC: FundingPro (TM) trust funding software system works similarly to the Brentmark software mentioned above. Then SettlementPro (TM) trust settlement software may be used during the post-mortem and disability administration of a trust. Both programs run on HotDocs (R) and are compatible with the WealthCounsel document assembly (drafting) system.

D. APPRAISAL & VALUATION SOFTWARE:

1. Estate Valuations & Pricing (EVP) Systems, Inc.: EVP has released a new version of its excellent stock and bond valuation software.

2. Other appraisal and valuation vendors abound, and will be featured later as time permits.

E. RESEARCH SOFTWARE & SERVICES:

1. Lexis-Nexis: Lexis features numerous estate planning titles in its Estate Practice and Elder Law Library, including the University of Miami

Philip E. Heckerling Institute on Estate Planning materials.

2. Thomson: West offers a number of estate planning research tools as well.

F. MISCELLANEOUS VENDORS:

1. Foundation Source (TM): Foundation Source offers administration services for private foundations. These services include maintenance of governing documents, tax filings, and grant processing and compliance. Investment services are not included and are not intended in the scope of the offered services.

2. Connect2A.com: Connect2A.com allows estate planning professionals to network, and is evidently compatible with HotDocs (R) and thus loosely affiliated with Advanced Planning Solutions, LLC and WealthCounsel, LLC (all in a row together).

3. CEPAC Communications: This company is also involved in marketing services specifically for legal professionals.
If any vendors or any important developments were omitted that we should have mentioned, please stay tuned. We will attempt to cover all items of interest in future reports as time permits. Thank you.

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Report #2 - Recent Developments

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REPORT NO. 2 - Monday, January 6, 2003 - Recent Developments

The following report has been filed by on-site reporter Eugene Zuspann II Esq. of Denver, Colorado regarding the following:

Recent Developments in Estate, Gift and Income Taxation – 2002
Parts One and Two
Carlyn S. McCaffrey
Dan T. Hastings
Howard M. Zaritsky
Materials by Richard B. Covey and Dan T. Hastings

Howard Zaritsky started with an analysis of the estate tax atmosphere in Washington (DC) and now feels that there is at least a 50% chance in the next few years that Congress will repeal the estate tax.

He discussed the regs on Split dollar arrangements. He feels that the final regs will adopt most of the proposed regs. They will affect any arrangement other than those with no equity component. He is not recommending any split dollar arrangements until the regs are finalized other than those without an equity component. Also, he discussed the corporate Responsibility Act of 2002 that states that a public company may not extend credit to any executive officer or director and the penalties and fines associated with this Act.

Dan Hastings - revisited the revised Uniform Principal and Income Act and the states adopting unitrust alternatives. He indicated the hardest thing is to keep up with the different states. There currently seem to be 12 states that now have or are considering unitrust statutes.

He also discussed the proposed regs under §643 and the fact that they have not yet been adopted as final. The effective date will be the first year after the regs become effective. The main issue is whether a state's unitrust statute will be within the ambit of the proposed (or final) regs.

This causes a problem in the estate tax area. A trust which in grandfathered from GST tax will lose its protection if a modification proscribed by the GST modification regulations occurs. Income accumulated under a pre-existing power is grandfathered because the accumulation is not a constructive addition, but a modification that adds or enhances a power to accumulate income would be a proscribed modification because it could increase the property passing to a lower generation. Both the power to adjust from income to principal and the conversion to a unitrust could result in such an increase, unless the trustee already has the power to accumulate income. He is recommending that no adjustments be made until after the regs become final.

Next discussed were CRT's

Atkinson case appeal. A CRT was adopted. The instrument was proper but the provisions of the trust were not followed. The payments as provided were not paid. The court held that failure to comply mandated a complete denial of the charitable deduction.

Carlyn -
Final regs under §645 (election to treat trust as part of an estate) were issued. This is not in the materials because it was issued shortly before X-mas [PDF link to the same is in the ABA-PTL Archives). These include changes to the definitions of a QRT (qualified revocable trust), the election, TIN and filing requirements and others. Carlyn pointed out problems with the comments (but not with the regs) in the definition of a QRT where the grantor is incapacitated. She also discussed those trusts where the grantor is living abroad, and several other aspects of the comments. See T.D. 9032 in the Dec 24, 2002. Federal Register.

She discussed the Cottage Savings case and PLR 2002231011 and the realization of gain or loss on exchange of property interests under §1001. In this ruling a dispute arose to the administration of a trust. The trust provided that the grandson was to receive an annuity for life with the remainder to charities. The dispute was settled with the charities receiving an amount now with the remaining assets remaining in trust. Payments will be made the grandson with the remainder pursuant to a general power of appointment in the grandson.. The issue in the ruling is whether any party would have taxable income. Anything not appointed would go to his descendants. The ruling held that this was a disposition of his interest in the trust because his entitlements are different than those he currently possesses. Also, any basis assigned to his interest is disregarded and the gain will be long term capital gain.

Dan Hastings - joint spousal revocable trusts. Two rulings denying the step-up in basis for the property of the surviving spouse were issued. The authority cited by the rulings is §1014(e). There are two articles on this topic in 2002 - one in Probate and Property by Howard Zaritsky and one in Estate Planning by Cason. Dan now feels that in certain circumstances, the use of this technique may have a chance of success with no downside potential.

Carlyn discussed the final regs on ESBTs issued this year. She discussed a number of provisions in the final regs. The regulations prevent the use of currently exercisable powers of appointment. There is not a lot that can be done. The regs require a permanent release of this power of appointment. Also, the final regs permit a grantor trust to elect to be an ESBT.

Dan Hastings - valuation cases.

Trusts owning stock will not be aggregated to determine control unless the decedent has a general power of appointment. A GPOA will be construed as ownership.

In the Estate of Dunn, the issue is the amount of the discount for built-in capital gains, or more precisely, how much of a discount should be allowed for the tax on such gains. The Tax Court held that some discount less than 100% rather than 100% of the tax is correct. The Fifth Circuit held that a discount of 100% of the tax on the built-in gains was appropriate.

Howard discussing FLP's.

Appeal of Strangi to the Fifth Circuit. The appeals court supported the Tax Court on all issues except 2036, which it remanded to the Tax Court to determine whether 2036 is applicable. Howard believes that this issue is the most relevant attack by the Service and that will be the only one that the Service may win in future cases.

To support the operation of an FLP, minimum documentation should be maintained. This includes Minute book.

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Report #3 - Tues. a.m. 1/7/03

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REPORT NO. 3 - Tuesday, January 7, 2003

The following report has been filed by on-site reporter Eugene Zuspann II Esq. of Denver, Colorado regarding the following:

Adventures in Life Insurance! (And You Thought It Would Be Boring)
Jonathan G. Blattmachr
This presentation covered how to obtain income tax "deductions" for term premiums paid, how to avoid GST tax for a life insurance trust without using GST tax exemption, how to double the power of Crummey withdrawal rights, and how to plan with split-dollar life insurance.

About 80% of states completely exempt life insurance proceeds from creditors claims.

Jonathan first discussed the types of life insurance. His conclusion - there is only one real type of life insurance and that is term insurance.

Life insurance is the only investment that has tax free compounding (as opposed to tax deferred compounding). This is even true in muni bonds because the issuer does not pay a rate comparable to a taxable investment, i.e. the bond has a lower rate.

Jonathan draws life insurance trusts so that the entire gift lapses in the year of the gift and the beneficiaries have the right to withdraw their prorata share in excess of the 5 and 5 power. This allows the transferor for generation skipping purposes to change to the children. The Code provides that each child’s shares will be considered a separate trust. This allows the trust to qualify for gst exemption. Jonathan calls this technique cascading Crummy powers.

A problem with the above scenario is that, except in 4 or 5 states, this trust may be subject to the claims of creditors. Texas has acknowledged the problem and changed the law to exclude annual exclusion gifts from creditor claims.

Next he discussed §264 of the Code stating that life insurance premiums are not deductible.

He discussed the benefit of preloading a life insurance policy so that the excess cash in the purchase will, with the tax free earnings, pay for the policy over the desired term. His example had the insured funding the policy with $54,000 so that, with the earnings, the policy would pay the $91,000 premiums on a 20 year term policy at which time the insured, Jonathan, would let the policy lapse.

PLR 9636033

Avoiding the 3 year rule under §2035. There is an exception for a full and adequate sale of the policy. This can be done by making sure the life insurance trust is a grantor trust, and sell the policy for the interpolated terminal reserve to the trust.
PLR 9413045

Turning the Tables: When Do the IRS Actuarial Tables Not Apply?
Lawrence P. Katzenstein
This presentation examined when departures from the IRS actuarial tables are permitted or required, including situations of under-productive property and increased risk of mortality, and will consider the implications of recent decisions permitting departures from the tables in valuing the right to receive state lottery payments.

The purpose of this presentation is to analyze when the actuarial tables do not or should not apply.

An example when the tables are not used are simultaneous deaths. They also do not apply to retirement plans as “those sections [of the Code] have their own separate, prescribed rules for determining actuarial values.” There are also exceptions provided in the regulations. See Reg. Section 1.7520-3(a). Most of these deal with different authority provided by other sections of the Code.

The statutory authority for the tables is under IRC §7520. Larry discussed the ability of the service to ignore the tables. The Service has tried to bootstrap Revenue Rulings, rather than regulations, to set doctrine for ignoring the tables. He does not believe this is correct, and that the Service must use the tables in any case in which the regulations do not provide an exception

One exception in which the regs are totally silent is the creditworthiness of the payor in an annuity situation, i.e. an annuity from Enron. Another area is that of trust exhaustion. The materials cite Estate of Benjamin Shapiro, which is a 2013 credit case. In this case, the Service argued that the trust would be exhausted within 4 years. The Tax Court held that the tables must be used. The regulations were changed, but Larry still believes the regulations are wrong. The regs conclude that if the trust will be exhausted, the gift to the remainder beneficiaries will go up, but the value of the gift should go down. Larry concludes that the correct answer is to take into account the life expectancy of the beneficiary and the payment to the beneficiary, capped by the amount going into the trust.

Another situation is that of underproductive property. If the property in the trust does not produce income, i.e. closely held stock paying no dividends in which the beneficiary does not have the right to make the property productive, then the tables may not be used. Larry pointed out the O'Reilly case in the Eighth Circuit holding that the tables could not be used where the dividend rate was far less than the 10% interest rate assumed by the tables. This is a pre-7520 regulation case.

The next situation that has little litigation or ruling activity is when the mortality tables cannot be used because of the physical condition of the measuring life. The regs provide that if the individual is known to be terminally ill, the tables will not apply. The regs do provide a rebuttable presumption that the tables may be used if the person survives for 18 months.

Another problem area is where the decedent has won the lottery but dies before receiving full payment. There are a number of cases that hold that the estate does not have to use the tables. This departure from the tables is surprising and the practitioner needs to read the cases if the issue presents itself.

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Report #4 - Wed. a.m. 1/8/03

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REPORT NO. 4 - Wednesday 1/8/3

Worth the Effort Even Beyond the Grave - an Update of Post-mortem Tax Planning Strategies
Steve R. Akers 1/8/3

The emphasis of the presentation was on current events - Steve has a 145 page outline and did not try to cover any significant portion of his materials.

Effect of 2% floor on miscellaneous itemized deductions - §67. Scott case issued in 2002 was a Virginia case. The case held that because in Virginia a fiduciary could be protected by investing in certain statutorily approved investments, that there is no reason to hire an outside advisor. As such, in Virginia, any such expense would be subject to §67. There is still uncertainty in this area.

Steve discussed the new §645 regs. These were also discussed by Carlyn on Monday. He pointed out many of the differences between the proposed regs discussed in his materials, and the final regs.

Alternate valuation date - dealing with assets in a poor economy. Remember to consider an election under §2032. Also, consider making sufficient disclaimers or reducing the QTIP election to cause a small amount of tax to be payable. Remember the issue is different than several years ago because the estate may pay some tax now that would not be due at all if the estate tax is repealed.

Deduction of Administrative expenses attributable to QTIP trust or other non-probate assets. The Grant case (2d Cir, 2002) was discussed regarding the disallowance of administration expenses and personal representative fees on the decedent's estate tax return. Although the case seems to say these were not deductible due to the fact that the majority of the estate was in a revocable trust (11000 of 876000), the facts actually indicate that many of the expenses were not deductible anyway, i.e. expenses in selling the residence when the estate had adequate cash to pay the estate taxes. Also, the Maryland statutes limit the amount of both PR and trustee fees, and those charged substantially exceeded that amount.

Valuation of disputed claims in an estate. The cases continue to hold that post death events are not to be considered in determining the deduction - it is to be determined at the moment of death. Steve discussed the holding in the O'Neal case. The 11th Circuit held that the IRS cannot even admit into evidence the fact that the claim was settled for 1/17th of the amount claimed on the 706. A significant factor is that the IRS did not put on its own expert in determining the value of this claim, even though the parties had been ordered to put on evidence of their positions.

Transfer of an interest in a QTIP trust. This issue arises when the surviving spouse wants the QTIP assets to go to the children without waiting for his/her death. If they disclaim this extra amount in the decedent's estate there will be estate tax. An alternative is to leave the assets outright to or in a QTIP trust for the surviving spouse, who can assign an interest in the property or trust. This should not be a prearranged event. However, it uses the applicable exclusion amount of the surviving spouse rather than causing tax in the decedent's estate. A proposed reg was issued this year explaining the tax effects assigning an interest in a QTIP - Prop. Reg. §25.2511-2. Steve discussed the valuation issues regarding funding a marital deduction with assets subject to discounts, where the estate had control of such assets. The cases governing this issue are Chenowith, Bellinger, Disanto, etc. Possible methods suggested for avoiding the problem: Fund the marital bequest with a note, have someone purchase the minority interest from the estate within the first six months and elect the alternate valuation date, fund using a defined value formula conveyance or make these marital gifts during lifetime.

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From the Far Bank of the River Styx: Post-mortem Estate Planning with Limited Partnerships
Dan Markstein
1/8/3

Holding or investing in Limited Partnerships by Fiduciaries. Bogart on Trusts states that retention of such an interest, without express authority in the governing instrument, could expose the fiduciary to liability. This is enforced by a similar ruling by the U.S. Comptroller of the Currency. There are examples of language authorizing the investment in or retention of an LP interest in the materials.

There are funding problems associated with LP interests. The estate must engage an appraiser to determine the discounts, not only for the estate tax return but also for the funding of the trusts. Dan also further discussed the Chenoweth problem discussed by Steve Akers. This should usually not be a problem unless the discount on an interest used for funding is greater than that used for the entire interest on the estate tax return.

There are also potential problems with funding a trust with a limited partnership interest. One of these is reporting income from the partnership on the trust return where the cash distribution is less than the income. If the trust has to distribute all income, then it may not have enough cash left to pay the tax on the excess income it did not receive. An alternative is to sell the partnership interest for a note. The value of the note must be equal to the value of the interest sold. The materials set out different statutes, regs and cases on valuing a note. (See, Harper 83 TCM 1641 (2002) discounting a third-party secured note by 12% for estate tax purposes) Failure to do so may constitute a gift.

Another issue discussed is whether Regulation U issued by the Federal Reserve applies to the grant of a security interest in the limited partnership interest that is sold? Although staff opinions indicate that this is not true, there does not seem to be solid authority.

Solutions:

- Do not secure the note with the security interest (the LP)
- Enhance the note - maybe with a guarantee by some of the beneficiaries.
- Get a letter of credit

(This is a complex issue covering about 15 pages in the materials - get and read the materials)

Paying the estate tax. Dan does not like borrowing from the LP interest - it goes against the argument that the interest is illiquid used in the appraisal for the discount.

Possibility of elections under 6161 and 6166
Borrow from a bank - without using the LP as security
Variable rate demand note

He closed by discussing the post-mortem creation of a partnership. Funding of the marital and by-pass trusts should be completed before the creation of a partnership to avoid a reverse Chenoweth type problem. Another question is whether there is a 2519 issue if a QTIP trust is involved in the formation, but FSA 199920016 says not.

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Report #5

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REPORT NO. 5 - Tues Jan 7

First - several hot new items:

- A fact sheet on the President's stimulus proposal can be accessed at

http://www.whitehouse.gov/news/releases/2003/01/20030107.html

- The fourth quarterly edition of the Uniform Trust Code Notes has been released. It includes an article by David English on the Kansas adoption of the UTC and an article by Ed Halbach on the duties of trustees.

The newsletter is available on the homepage of the NCCUSL website - http://www.nccusl.org - under "Important Documents."

Also, an omission occurred in the introduction to this year's program. Michael Weinberg, of Denver, Co is also one of the panel in the breakout session on Thursday. The correct information should be:

IV-E Split-Dollar Life Insurance
Lawrence Brody
Jonathan G. Blattmachr
Mary Ann Mancini
Michael D. Weinberg

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The following report has been filed concerning the software vendors who are in the Exhibit Hall this year and other technology news by our on-site Reporter, Jason Havens, Esq. of Destin, Florida, the creator of the Legal Research for Estate Planners Web site (http://www.jasonhavens.net). This report continues the coverage of software and some other vendors who are exhibiting at the Institute. Although our reports do not include direct hyperlinks, we would recommend that users search for a particular vendor using a search engine such as Google (http://www.google.com).

Following are the highlights from the "second round" among the software and other vendors. These highlights are generally classified in categories that will hopefully prove helpful to list members. A final "round" will hopefully follow.

A. CALCULATION SOFTWARE:

1. Thomson (continued): Thomson also offers the Intuitive Estate Planner, which will probably face serious competition from the new Kugler Estate Analyzer (TM) by Brentmark (mentioned in our first software report for 2003) and the new Advanced ViewPlan by CCH.

2. BNA Estate Tax Planner: BNA's Estate Tax Planner is still available, as is BNA's tax preparation software.

3. Crescendo Interactive, Inc.: Crescendo has long been recognized for its excellent charitable planning software that handles calculations and also produces illustrations of charitable planning techniques.

4. PG Calc, Incorporated: PG Calc offers software for charitable gift planners.

B. DRAFTING SOFTWARE:

1. Lawgic (continued): Lawgic also intends to add a list serve and bulletin board feature to serve its users. The addition will emulate the ABA-PTL list serve.

2. Eidelman Associates (continued): EP Expert (TM) will allow a user to "drag and drop" people into various roles in structuring documents, e.g., dragging a person into a fiduciary role as a trustee or personal representative/executor/executrix. EP Expert also handles pronouns, commas, and other common grammatical issues. Several large firms apparently use EP Expert to produce their custom forms based on their own language.

3. Datatech Software, Inc. (continued): ThinkDOCS uses an integrated database that stores answers that users input in dialog boxes. Therefore, if a change is made (e.g., changing a client's name from "Bill" to "William"), the database can prompt the user that a change has occurred and can then apply the change to all of the client's documents. Users can also use templates to make ThinkDOCS more efficient and effective, similar to other drafting programs. ThinkDOCS costs $695 for a two-user license as of May 2002 (according to Law Office Computing).

Datatech also offers Quick and Easy, a program that facilitates the preparation of tax returns (as listed under category C below). This program will probably become one of the most popular tax preparation packages due to its ease of use.

C. TRUST ACCOUNTING & RELATED ADMINISTRATION SOFTWARE:

1. The Lackner Group, Inc.: The Lackner Group, Inc. has consistently offered a single-entry estate administration program known as the 6-in-1 Estate

Administration System. This system produces the 706, 1041, the accounting and inventory for the estate administration, and relevant state tax forms as well.

2. Financial Data Service, Inc.: This program also produces the 706 and 709 transfer tax returns, as well as probate reports and other items.

3. Lynx Software Systems, Inc.: Lynx offers a trust accounting software package to United States and international customers.

D. APPRAISAL & VALUATION SOFTWARE:

(N/A for 2003 software report #2)

E. RESEARCH SOFTWARE & SERVICES:

(N/A for 2003 software report #2)

F. MISCELLANEOUS VENDORS:

1. Advance Choice, Inc./DocuBank: DocuBank (R) offers a secure place to store disability planning documents, such as durable powers of attorney, health care surrogates/durable powers of attorney for healthcare, and living wills. Attorneys can apparently join for free, and will then receive discounts for their clients.

2. Power Presentations: This company offers packaged presentations for estate planning seminars and client presentations.

3. Thomson: Practitioners Publishing Company (PPC) offers a "Basic Estate Planning Complete Engagement Kit" that purports to be a comprehensive tool to understand the basic estate planning techniques and the technology resources to help attorneys advise their clients in a profitable manner.

4. Schumaker Publishing, Inc.: This company markets packaged websites for estate planning attorneys.

If any vendors or any important developments were omitted that we should have mentioned, please stay tuned. We will attempt to cover all items of interest in future reports as time permits. Thank you.

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What to Do with Art and Other Valuable Stuff
Ralph Lerner
Tues, Jan 7

The primary issue of the presentation is to make sure the contribution is correctly made so that the anticipated income, estate and gift tax consequences are obtained.

Before making the gift, the donor must determine 4 things:

1. The status of the charitable organization - a public vs private charity
2. The type of property being contributed - capital gain property is best
3. Whether the property satisfies the related use rule, and
4. Obtain a qualified appraisal if the value and type of property so requires.

The donor should write a letter to the charity before the contribution describing the property and asking what use the charity will make of it. Documentation of a related use is necessary to protect the donor's tax deductions.

Remember, if the donor retains too many rights, that the gift may be of a future interest and no charitable deduction would be allowed. Ralph's materials also include checklists for letters to appraisers and forms to be used in making the gift.

Interspersed with a number of great comments and war stories, this program was both entertaining and enlightening.

Charitable Lead Trusts Re-examined:
The Dawning of a Golden Age
Ed Beckwith
Jan 7

Ed reviewed of CLTs in the current atmosphere of uncertainty regarding the estate and gift tax and the increasing unified credit amount.

Discussed were Qualified Non-grantor CLT's - those that are treated as separate taxpayers, and Qualified Grantor CLT's - those that are grantor trusts, and finally, Non-Qualified Non-grantor CLT's.

Because for gift tax purposes, a deduction is allowable for the present value of the charitable interest, the lower the 7520 rate, the better.

He discussed the GST effects of such trusts - no GST effects on creation but GST may be due upon termination if the remainder beneficiaries are skip persons. The taxation of the trust and the beneficiaries, and the excised taxes that could be imposed were also explained.

Ed then went through some of the advanced planning considerations. These include opportunities created by the 2001 Tax Act and general planning considerations applicable to CLT's, as well as using the CLT as the family's charitable pocketbook. Finally, he finished with a summary of current developments occurring in this area.

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Report #6

As we have done in January for the last six years, and again with the permission of the University of Miami School of Law Center for Continuing Legal Education, we will be posting to this list throughout the coming week highlights of the proceedings of the 37th Annual Philip E. Heckerling Institute on Estate Planning that is being held January 6-10, 2003 at the Fontainebleau Hilton Resort and Towers in Miami Beach, Florida.

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REPORT NO. 6

Unwinding the Discount Entity: What to do When the Family Wants to Take the Money and Run
Rich Robinson
January 9

Rich's program describes the tax effects of unwinding an entity taxed as a partnership. He debunks the theory that unwinding or withdrawing property from such a partnership is always a tax free transaction. He discussed and analyzed 3 sections that cause significant headaches in distributing property from the FLP/FLLC:

The general rule under §731 is that no gain is recognized when a partnership distributes property to a partner unless the amount of cash distributed exceeds the distributee's basis for the partnership interest. However, the following sections may create substantial income tax liability if they apply.

§704(c)(1)(B) gain. If partner A contributes appreciated property to a partnership and within 7 years, such property is distributed to another partner, partner A is taxed on the built-in gain (FMV at date of contribution less adjusted basis) as if it was sold by the partnership.

§731 gain. Cash includes marketable securities unless the partnership is an investment company and the distributee is an eligible partner or the distributee partner previously contributed the securities to the partnership. This rule often causes a distribution of marketable securities to be treated as cash, and the FMV of the securities is greater than the distributee partner's adjusted basis.

§737(a) gain. If with 7 years after the date of the contribution, a distribution is made to a partner, such partner shall be treated as recognizing gain in an amount equal to the lesser of the excess distribution (the excess of FMV of the distributed property over the partner's adjusted basis) or the partner's pre-contribution gain. Pre-contribution gain is the 704(c)(1)(B) gain which would be allocated to the partner if <u>all</u> of that partner's contributed property had be distributed to another partner

Rich then discussed several examples and the tax effects of each. Many of the problems arise because of the normal operation of an FLP/FLLC - mom and dad form the partnership and then make gifts, often substantial, to the children. The rules will operate on distributions of property after these gifts and the gain can often exceed the amount of the FMV of the distribution and affect all of the partners, not just the distributee.

A short example (most had numbers associated, and Rich's analysis is quite complete):

Mom contributes assets to an FLP, including a condo. She makes gifts of 30% of the FLP to children. Within 7 years, the condo is distributed back to Mom. Result: 30% of the condo is a 704 (c)(1)(B) taxable distribution with respect to the children and the same 30% would be a §737 taxable distribution to Mom since it is no longer her previously contributed property under the "step into the shoes" rule.

CAVEAT: Before advising a partnership anticipating making a distribution from a partnership, either study the rules or retain competent tax counsel (or both) to make sure the anticipated tax effects are correct.

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Report #7

This report from Glen Yale covers several presentations.   Also, a later report from John Warnick does the same. Joe Hodges has provided a copy of the full institute program that sent in a separate e-mail. If you have questions about the programs referred to in this report, please see the program description.

- Gene Zuspann

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REPORT NO. 7

The following report was sent by Glen A.Yale. It covers **Estate Planning With GRATs and Near-GRATs – Opportunities and**
Pitfalls of a Cloudy Crystal Ball by John R. Price, What Do You Mean, Subpoena? I'm a Lawyer! by Russell G. Allen, and **One Percent, Two Percent, Three Percent, Four – No Matter What, You Pay, the Bene Wants More by Susan Porter**

Russell Allen gives superb coverage of the issues involved in his two sentence titled topic "What Do You Mean Subpoena? I'm a Lawyer!" After reviewing the attorney-client privilege, the attorney work product doctrine and the tax practitioner's privilege, Allen shows that under the common law there was a fiduciary exception to the attorney-client privilege under the notion that advice given the trustee was ultimately for the benefit of the beneficiaries and could be discovered. Recent cases in Texas and California in addressing situations in which the attorney-client privilege is codified take the better approach that the attorney represents the trustee and the beneficiaries are better served by permitting the attorney to seek privileged advice. He gives proposed language to draft around the problem in states that do not follow the Texas and California approach.

In Federal tax controversies the attorney-client privilege is often unavailable because of the view that advice for tax preparation was not for purposes of litigation and that business advice or communication to prepare a tax return was not legal advice. The work product doctrine suffers particularly under the anticipation of litigation requirement. Some recent cases that take a more reasonable approach are discussed. Communications that involve advice may be protected if there is no waiver and documents that explain a transaction but does not contain legal advice will also not be privileged.

In Estate Planning with GRATs and Near-GRATs ? Opportunities and Pitfalls of a Cloudy Crystal Ball, the learned Prof. John R. Price proposed a new device after stating the two gambles of a GRAT, (1) the value of the property transferred will appreciate at a rate greater than the §7520 rate and (2) the grantor will survive the reserved term; and giving his argument that the IRS position is highly questionable that IRC §2039 applies to bring into the grantor's estate the entire trust property when the grantor does not survive the trust term. Prof. Price proposes eliminating some of the risks of the GRAT by a sale to an income tax defective trust in exchange for an annuity for a fixed term. His article gave more detail on the device:

1. Client creates an IDIT, from which discretionary distributions can be made to his children and grandchildren.

2. Client transfers a significant amount of property, say $100,000 to $1,000,000 to the IDIT. Client's GSTT exemption is allocated to the transfer so the IDIT will be completely exempt.

3. Client transfers assets that qualify for a substation valuation discount (e.g., closely held stock or units of an FLP or LLC) to the IDIT in exchange for payment of an annuity for a fixed term. Payments are to be made to the client as long as he lives. If the client dies before the end of the term any remaining payments are to be made to his estate. The annuity agreement should be drafted to meet the requirements of §2702.

Prof. Price proceeded to set forth the income, gift, GST and estate tax consequences of his device. With Waltan and his new devise, the advantages are "almost irresistible."

Susan Porter with U.S. Trust Company gives the independent trustee's perspective on how to approach the income beneficiary's and remainder beneficiary's high expectations as to investment returns and allocation of income and principal as well as distribution expectations in One Percent, Two Percent, Three Percent, Four?No Matter What You Pay, the Bene Wants More. In her paper and her oral presentation she explained how an ascertainable standard limited to "health, education, maintenance and support" might not meet the grantor's expectations of distributions to the income or residuary beneficiaries. Further, ascertainable standards may require distributions that are not desired, such as funds that disqualify for government assistance. Independent trustees favor "wide-open" discretionary distribution standards so expected distributions can be made. Through three cases, McNeil I, McNeil II, and Hinrichs, the distribution decision-making where the trustee has sole discretion were explored by Ms. Porter. Trustees must give full communication to the beneficiaries to avoid liability, but after doing so the discretion at most will be subject to a reasonableness standard.

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Report #8A

This message varies in format from the others sent in the past The materials from John Warnick are a collection of notes from Tues, Wed. and Thurs that John forwarded to me in one file. This report is sent in two parts due to its large size.

Although some of the material has been covered in other reports, the views of several people seems better than those of just one so all material received is included, even though it is repetitive.

There are a couple of other reports still to be sent, but due to problems in Miami, no one was left to handle these.

- Gene Zuspann

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REPORT NO. 8A

The following are the John Warnick's notes covering presentations over three days. John has some page references to the materials. I have left these, both for those that were in Miami and have the materials, and those that were not, but get the proceedings from Matthew Bender.

JONATHAN BLATTMACHR – Some Fundamental and Fine Points in Uses of Life Insurance in Estate and Financial Planning.

Cascading Crummey Powers – hanging powers aren't always the best thing. Why not let the power lapse immediately so that that the child will be considered to be the transferor for the amount which will be treated as a release and hence as a gift by the donee. This should permit approximately 80% of the gift that the parent makes to the ILIT for the child to be treated as a transfer from the child to the grandchildren. Because the trust will be treated as separate trusts for GST purposes this will permit the trustee to make distributions to the child from the portion that the parent is tgreated as transferor for GST purposes. Also, that portion of the trust can be used to make distributions to the grandchildren for health and education because there is an exception for such distributions under the GST tax. But any other distributions to the grandchildren will be made from the roughly 80% which is treated as a separate share and which the child is treated as the transferor for GST purposes.

Note: You can pay for Term Insurance with Pre-Tax Income Which is Never Taxed. Since the profit earned on the cash value component of a life insurance policy is not subject to income tax until the profit is withdrawn. By using those earnings to pay for the term cost of the insurance, it should be possible to pay for life insurance with income which will never be subject to tax. That is as good, if not better, than making those premiums tax deductible.

Split Dollar arrangement – increases the leverage of cascading crummy powers.

PLR 9413045– says that Allen (10th Cir. 1961) doesn't apply to the sale of a life insurance policy to a trust. It may offer a vehicle for defeating the three year pullback rule where the insured is the owner of a policy and we want to transfer it to an ILIT.

LAWRENCE P. KATZENSTEIN – Turning the Tables: When Do the IRS Acturial Tables Not Apply.

If you have a bunch of people in a car who are trying to figure out where to go, the one looking out the rearview window is the actuary. He is trying to get to where we need to be by looking at where we have already been.

We have a lot more freedom to argue when the tables should apply or should not apply then what we thought we would have when the tables were first introduced in a statutory context through Sec. 7520.

The interest rates are rounded to every two-tenths of one percent to save printing costs.

He would propose using an average of the last five or ten years rather than what current rates are. But what the current rules permit us to do is to take advantage of anomalies in interest rates by using the techniques which are most favorable given the current interest rate climate.

Why do we use the tables at all? Estate of Benjamin Shapiro TC-Memo 1993-483, 66 T.C.M. 1067: acturial tables…are an administrative convenience in that they provide a "bright line" approach to valuation making it unnecessary to hypothesize as to the facts and circumstances surrounding each case."

Cases where the Code directs the Tables Should Not Apply:

Retirement Plan:

Regulatory Exception: Does this mean that the Service can't depart from the tables unless it goes through the formal regulatory process. Maybe Congress meant that the Service can't depart from the tables unless they do so by regulation rather than by the use of rulings and procedures.

Effective Date: The regulations didn't become effective until 1995. What happens for the first six years, between 1989 and 1995, while we were waiting for the IRS to issue the regulations? The Service takes the position that 7520 didn't abrogate all the case law that had developed in the prior 50 years. But if you read the statute it appears that is exactly what Congress intended to do.

If you have a simultaneous death or unproductive property case during the 1989 to 1995 period, you may have a very good case that you still should be able to use the table.

Rev. Rul. 96-3 –

Harrison case. The Tax Court has been much more favorable for the IRS than other courts.

Other Regulatory Exceptions – Reg. Section 1.7520-3(a)

1. Retirement plans.
2. Section 72 (annuity rules) however note that charitable annuities and gift annuities are taxed under Section 72 but the income tax charitable deduction is computed under 7520.

Marketability Discount: The regulations don't address the creditworthiness of the payor of the annuity or other obligation.

Trust Exhaustion – He thinks the IRS is just wrong on this. Shapiro is the pre-7520 law on that point. Example 5 of Reg. 25.7520-3(b)(2)(v), in Katzenstein's opinion, misunderstands the nature of exhaustion. What gift is there to a remainder beneficiary if the trust is going to be exhausted? There is nothing left for the remaindermen. This is also inconsistent with Rev. Rul. 77-374.

Unproductive and Underproductive Property. The IRS is very clear that we can't use the tables with unproductive property except in limited circumstances. The IRS won't permit the tables to be used with unproductive property unless the income beneficiary has the right under either state law or the trust instrument to make the trust productive. The IRS doesn't treat underproductive property any more favorably. Katzenstein believes the 1990 Tax Court opinion in the O'Reilly case (95 T.C. 646) should be good law and should survive enactment of 7520. In the regulations the IRS says that Congress didn't intend to supercede prior case law.

How do we deal with an income interest where there is a power of invasion. It is clear that we can't use the tables if the power of invasion is unrestricted. But the IRS in the regulations seem to suggest that we can deal with such interests using nonstandard tables if the power of invasion is governed by ascertainable standards.

Judicial Exceptions

The Lottery Cases

In California the lottery payments can't be assigned. Amazingly, the 9th Circuit held that we don't have to value the lottery payments for estate tax purposes under the actuarial tables. 2001-2 USTC ¶60,356. The Tax Court has disagreed in a Connecticut lottery case. 116 TC 142.

RALPH E. LERNER What To Do With Art and Other Valuable Stuff.

The Step Donation – Give away an undivided 25% interest to a museum. Then a few years later give away another 25%. That 25% will be worth more now because once the initial gift is made to the museum it will be listed on the list maintained by the auction houses and museums. That listing generally means the value of the painting will go up. The museum will usually insist on a gift promise that you will leave them the balance of the art upon your death so that they won't end up as co-owner with squabbling siblings.

Charitable remainder Unitrust – The 170(a)(3) problem.

PLR 9452026 creates an opportunity if you sell the item within the first year. The deduction is allowed under 170(a)(3) at the time the art is sold. The amount of the deduction will probably be limited to the collector's cost since the contribution would not satisfy the related use rule.

Private Operating Foundation. This may be a viable alternative for certain collectors. Very humorous story about a wealthy collector's willingness to grant public access to his collection.

Copyright. In preparing a will for a collector an attorney should take care to make sure that if the collector does own any copyright interest it is transferred to the charitable organization along with the work of art to avoid the possibility of running afoul of the related use rule of section 2055(e)(4)(C).

Quedlinburg Treasures case.

Using Rev. Proc. 96-15 to obtain an advance valuation ruling on a gift. But remember that it can also be used for an estate to obtain an early valuation of art work. This can be a tremendous advantage for the estate.

Edward J. Beckwith – A Reexamination of Charitable Lead Trusts.

The gift tax value of a $4 Million 6% payout CLAT for 15 years would be slightly more than the applicable exclusion amount. If the trust can achieve a return equal or greater to the 6% Payout there will be at least $4 million at the end of the 15 years.

PLR 199927031 illustrates the IRS approval of a formula used to fund the CLT at death. The only variable to be determined at death was the amount of the interest rate.

Operating a CLT as the Family's Charitable Pocketbook.

Funding the Family Foundation with a Charitable Lead Trust – PLR 200138018.

Drafting After EGTRRA (and other recent developments): How Different Is It?

Panel discussion led by Pam Schneider with Paul Frimmer and Carol Harrington

They consider the outline very much a work in progress.

What changes have you made as a result of EGTRRA?

Frimmer: has made almost no changes. Typically gives an independent trustee broad powers. In almost all situations an independent trustee will not do anything without broad consensus from the beneficiaries.

Harrington: Surprised to see that there are so many different patterns and permutations. So there isn't necessarily an efficient way to deal with EGTRRA. It is troubling to her because it is so time-consuming and client-sensitive.

Schneider: She had always stressed the philosophy of not letting the tax tail wag the dog. But now the choices are unlimited. It is very difficult to have a very efficient client meeting as a result.

How much attention are you paying to the Carry-over Basis Rules:

Frimmer: has done nothing. Carryover basis seems to be an allocation post-mortem process. If there is going to be contention, he is uncertain what to do to make it easier. He has included some language at page 6-15. He is using a Bad Faith standard and putting the burden on the beneficiary to show that the fiduciary has used bad faith. Frimmer gives an independent trustee power to make distributions even over the QTIP so as to facilitate post-mortem estate planning.

Harrington: Has tried to introduce flexibility into her documents. But hasn't felt that it makes a lot of sense to spend a lot of time on the carry-over basis because she doesn't have a great deal of confidence that we really know what is going to happen. She gives some specific examples of clauses to ensure flexibility at Pages 6-13 to 6-14. In addition to size of the trust, they have now included changes in tax law or family circumstances as factors that justify termination of the trust. In B at 6-13 she included a power in the independent trustee to amend the trust to carry out the grantor's purposes. There is a savings clause that protects against adversely affecting either the marital or charitable deductions. In C at page 6-14 she gives the independent trustee discretion to make distributions. Paul noted that sometimes he has given this independent trustee the power to amend the trust during an elderly client's incapacity.

Schneider: There are some forms at page 25 of the Recent Developments materials. But she hasn't done a great deal other than to make sure that the fiduciaries are indemnified against any claims as a result of their exercise of the allocation choices they make.

Frimmer: Ira Lustgarten used the ultimate ambulatory estate planning document: a will that left everything to the surviving spouse with disclaimer trusts that accomplished a variety of different objectives. Then it permitted the surviving spouse to pick and choose at the first spouse's death.

Formula Clauses:

Schneider: Pg. 6-1 A contains the Cap/Floor approach. In 3 at page 6-2 Pam offers two different alternatives to deal with the definition of the IRC which will define the size of the marital share in the event of repeal. A relies on an independent trustee to interpret what should be done. B refers to a specific point in time.

Harrington: At page 6-3 in ¶4 1.03 Carol attempts to define whether the estate tax or GST tax has been repealed. Then 1.01 and 1.02 deal with the possibilities of what to do if the taxes are repealed at my death or at my spouse's death. In ¶ 5 at the bottom of page 6-3 second line should read "husband/wife's later death"

Frimmer Another approach would be to give everything to a credit shelter trust that could qualify as a QTIP and then give the independent trustee the power to terminate the trust in favor of the surviving spouse.

What Do You Say In Your Marital Deduction Formula About The Repeal Of The State Death Tax Credit?

Schneider There are two variables. 1) what tax are we trying to eliminate? Is it just the Federal estate tax or is it both the federal and state death taxes?

2) Do we take state death taxes into consideration or only if they would be increased?

Take a look at your current language. Is it a bit ambiguous?

This problem is going to go away in 2005 because there won't be a state death tax credit at that time.

If you are dealing with a state that has a true pick-up tax and has decoupled, then use ¶ B1 on pages 6-4.

On the other hand look at the two options in ¶B2 a or b on pages 6-4 and 6-5. This would apply to states which have frozen its pick-up tax at the rates in existence and/or the unified credit available at some time before 2002. ¶a bets on repeal or that there will be too small of an estate at the survivor's death to incur any tax. The opposite example is ¶b which seeks to eliminate federal tax even if it means an increase in state tax.

You need to be aware that this is changing day by day as the various states try to sort out what they can or want to do.

Pennsylvania has decoupled but there are many people who feel that this is unconstitutional because the PA constitution requires that there be no discrimination in tax burden between individuals. Since the death tax may not be a flat tax perhaps it won't pass constitutional muster in PA.

Frimmer – note that a Section 529 plan can be a problem for a marital deduction bequest because it may not qualify for the marital deduction. We used to use language to protect the marital deduction. But many people have deleted that language. Look at the language at ¶ C2 on page 6-5.

The Destructible Marital Trust may make a lot of sense in many smaller estates.

There are distinct disadvantages of not using a QTIP other than the Ramon/Ramona problem. One is the PTP credit under 2013 and the other is the Mellinger discount opportunity. The surviving spouse could disclaim the power to revoke within nine months and preserve the opportunity to take advantage of Mellinger/Bonner valuation opportunities for a fractionalized interest. The 15 months…when coupled with the nine month disclaimer period…takes you out to the full 24 months for the 100% PTP credit.

The clauses at ¶ E1 on pages 6-6 through 6-8 permit the survivor to create a reverse QTIP and a Credit Shelter Trust through disclaimer but still have the opportunity to completely revoke the trust and take all of the assets out of the trust if the survivor lives more than 15 months after the first spouse's death. NOTE: After the Lassater case it is clear that the spouse can make a disclaimer into a trust that the survivor has a power of appointment over **if** that trust will be included in the surviving spouse's taxable estate.

Schneider Pam likes to tie up her definition of available GST Exemption. See her form at ¶ B on page 6-9.

Harrington. Carol doesn't feel the need to protect against the interested fiduciary making the GST elections and allocations.

Frimmer ¶ C2 on page 6-10 deals with one approach to protect against repeal of the GST tax. Another approach is to give the surviving spouse the power to add a deceased child's spouse or another non-skip person as a beneficiary. Yet another alternative is to give the power to an independent trustee the power to add a non-skip beneficiary.

Schneider: Would you add language that makes it obvious that after the GST Tax is repealed the trust can be terminated? Remember that the GST regulations deal with the substitution of a nominal beneficiary merely to avoid the taxable termination of a trust.

Downstream Split of a Trust Now Permitted under the 2001 Act – How Do We Take Advantage of That?

Schneider – If you look at your trust language or at state law, generally you will find that division is permitted only on identical terms. But the new law's flexibility permits the division to be made into trusts that don't have identical terms. Her language and the variations on the theme is found at ¶ D on page 6-10.

Harrington Her language is found at at ¶D5 on pages 6-10 through 6-12. Note: they use the words "adversely affect" rather than just "affect" because they have run into a situation where they wanted to qualify and weren't able to do so because it would affect qualification.

Schneider: Look at at ¶E on page 6-12 . The revised (B) and (C) are suggested because we now have the opportunity to make a qualified severance. She believes the downstream severance rules won't sunset. She believes they will be kept in any future law that replaces EGTRRA.

She puts language on what her intention is to provide some protection against the problem that there is a slip between the lawyer and the CPA. Paragraph ¶F on page 6-12
And 6-13 deals with the situation where you want to see automatic allocation. Paragraph ¶G is just the opposite where you want to opt out of the automatic allocation of GST exemption.

Frimmer: Offers an alternative to the Procter clause in a sales transaction. See the suggestion at the bottom of page 6-17. Schneider offers the more traditional defined value approach in Clause B starting at page 6-16.

Schneider: Expanded definition of descendants to deal with post-death conception. The goal is to have a clause that 90%+ of your clients will like. She doesn't think that it is quite there yet.

Harrington: Final question: what is the generation assignment of a clone?

LOU MEZZULLO Did They Get It Right? The Final Minimum Distribution Rules

The simplest part is the chart at page 7-29 which allows you to determine the applicable distribution period.

This chart deals with three different contingencies. The second column give us the rules if the participant is alive upon the RBD. The third column deals with what happens if the participant dies before the RBD. The fourth column deals with what happens at the time the participant dies when he/she has lived beyond the RBD. There is a change here for the non-spousal DB from what the 2001 proposed regulations had started with.

Neither the participant's estate nor Beneficiaries who take under a state's anti-lapse statute is considered a beneficiary.

You have three options after the participant dies.

Option #1 – cash out the beneficiary. Make a distribution to the beneficiary to satisfy the bequest.

Option #2 - Disclaimer

Option #3 – establish separate accounts. Final regulations have muddied up the water on what we have to do to establish separate accounts. Majorie Hoffman's comments would indicate you must set up the separate accounts by September 30th of the year following the year of date.

Spousal rollover. She may not want to do the rollover before she turns 59 ½ because if she needs a distribution she will be subject to a penalty on a premature distribution.

Having the spouse as the "sole DB" gives you some advantages but at the cost of losing some of the traditional protections associated with having a trust as the beneficiary.

PROFESSOR LAPIANA – State Law Developments – Searching for Revenue and Other Quests

There are three alternatives for dealing with the potential disconnect between federal and state death tax exemption or rates.

Disclaimer
Partial QTIP election
Clayton election – have the trustees hold the portion of the Marital Trust which doesn't qualify for the marital deduction as a separate trust on the same terms and conditions as the Family Trust or Credit Shelter Trust.

STEVE R. AKERS – Worth The Effort Even Beyond The Grave – An Update of Post-Mortem Tax Planning Strategies

Does The 2% Floor Apply to Investment Fees Incurred By a Trustee?

Mellon, O'Neill and Scott. There is a conflict between the circuits and taxpayers may want to consider taking advantage of that conflict. However, taxpayers should expect a challenge on the issues raised in O'Neill and Scott. The Scott case is currently on appeal and the result in Scott may be heavily influenced by local law.

Suggestion by Akers: Trustees might consider charging a higher trustee fee and then paying the investment advice and accounting services separately.

Another point: Estates are not subject to the 3% cutback or the 80% reduction in itemized deductions that individuals are subject to. Therefore, optimal planning would be to pay enough expenses each year to fully offset the estate's gross income. And, in the final year of an estate you may want to consider optimizing the expenses. This will take careful planning to assure that the estate is terminated in that year and that all of its assets are distributed in time.

Note: the estimated payments made by a trust or estate may, by election, be treated as having been made on behalf of one or more beneficiaries. This election may be made even if the trust or estate has not made an overpayment of tax. This is a change from former law.

Section 645 – Final Regulations issued and effective on 12/24/2002. Changes in the final regulations: It includes a trust which is revocable only with the consent of an adverse party. It is ok to have a foreign trust. Maximum election period – later of two years after date of death or six months after the issuance of a closing letter plus another six months. This is an addition of six months to the period provided in the proposed regulations.

What type of a return does the QRT have to file at the end of the first short year. The proposed regulations had required you file a full return. There was a lot of criticism of the proposed regulations because of the cumbersome task of trying to sort out the income between the short period and the estate's return. The final regulations permit the trustee to merely file an information return for that short year. Even decedents dying before 12/24/02 can rely on the final regulations and avoid filing the full return.

The final regulations do permit the trust to avoid filing estimated income taxes for the first two years.

Alternate Valuation Date complications with a pecuniary marital deduction formula that uses date of distribution. In this case the pecuniary bequest forces the entire loss on the credit shelter trust.

Consider using a marital deduction formula that shifts at least part, if not all, of the depreciation in value against the marital share. But how can you use the alternate valuation date in this situation since it requires that the combined amount of estate tax and GST tax be decreased? Consider making a small disclaimer or a partial QTIP election to force payment of a small amount of tax.

Deduction of Personal Representative Fees as Administration Expenses Limited Because the Bulk of the Assets Passed Under a Revocable Trust. Grant v. Comm'r 294 F.3d (2d Cir. 2002), aff'g T.C. Memo 1999-396.

This case arose under Maryland law and reaches a very bad result. The Second Circuit decision suggests that a big difference in the deductibility of administration expenses turns on whether the assets are passed to the beneficiaries by probate or in a non-probate transfer. Maryland imposes a very low cap on trustee fees. Since most of the assets were in the revocable trust only $1,000 would be allowed for the personal representative fees.

SOLUTION: If your client resides in a state with law similar to Maryland, consider having a pour-up revocable trust. If there are no creditor concerns, this may result in the availability of a larger deduction without adversely impacting the estate.

Note: The Tax Court's analysis suggests that section 2053(b) may not be applicable to assets in a revocable trust. 2053(b) applies to expenses of administering property not subject to claims. Revocable trust assets typically are subject to creditors claims in most states. Therefore, the technically correct Code section for deducting expenses of administration would be section 2053 (b).

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Report #8B

This report is a continuation of 8A. It was broken due to the large size.

- Gene Zuspann

As we have done in January for the last six years, and again with the permission of the University of Miami School of Law Center for Continuing Legal Education, we will be posting to this list throughout the coming week highlights of the proceedings of the 37th Annual Philip E. Heckerling Institute on Estate Planning that is being held January 6-10, 2003 at the Fontainebleau Hilton Resort and Towers in Miami Beach, Florida.

A complete listing of the proceedings and speakers is available on the Institute's Web site. The URL for that site is http://www.law.miami.edu/heckerling.
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REPORT NO. 8B

DANIEL H. MARKSTEIN, III From The Far Bank Of The River Styx – An Update of Post-Mortem Planning Issues

p. 41 – Sale of a partnership interest to a grantor trust – concerns have been raised regarding the value of the note issued by the trust and the possibility that treatment of the debt as equity might result in the transaction being subject to Sections 2701 or 2702. Also, watch out if you have a GST trust and you are using a beneficiary guaranty that you don't end up with a taxable gift to the trust by the guarantors who would then become both transferors and partial grantors of the trust, thereby fragmenting the trust's grantor trust status.

Perfect the security interest which collateralizes the note. Is there any problem with this. See the discussion of Regulation U at page 50. There is a margin requirement of 50%. Would that apply to the limited partnership interest sold? There are two Federal Reserve Board staff opinions that support the position that a security interest in a limited partnership interest would not implicate Regulation U because the partnership interest is not "margin stock". But these are only staff opinions. There is no Board opinion. The only other comfort is the fact that the cases that have been litigated under Regulation U suggest there is no private cause of action for a violation of Regulation U. But the draconian sanctions which can be imposed on Regulation U violators may still suggest caution.

What can be done to avoid Regulation U status? Perhaps a beneficiary guaranty is the answer. Or perhaps a letter of credit from an independent bank. Markstein is using that and has got a letter of credit issued for 35 basis points. How can the IRS argue it isn't a debt instrument or that the note isn't worth its face amount. Perhaps paying some gift tax to fund up the trust so that it will have adequate collateral to stand behind the note is an answer.

What do you do if at the death of a taxpayer, the estate is largely illiquid because it holds a minority interest? Consider borrowing using a Variable Rate Demand Note. The problem is that to obtain an estate tax deduction for unpaid but accruable interest the IRS has ruled that the obligation must not be subject to prepayment or to acceleration upon default. If the interest can be made deductible there is a double bonus because the amount that will have to be borrowed to pay estate tax will be reduced. There is a trade-off in that the fiduciary income tax return will not be able to deduct that interest if it has been taken on the estate tax return.

There is a corporate financing technique called a VRDN ("Variable Rate Demand Note") that involves a taxable, floating rate, credit enhanced security sold to institutional investors. The interest rate can be converted from a floating rate to a fixed rate using the issuance of an interest rate swap. To enhance the borrowing leverage the estate would get a letter of credit from a bank that would back the estate's VRDN.

Hollywood has really started to focus on estate planning. Consider the following recent releases:

For the client who really is concerned that he doesn't want his children to be spoiled by a large inheritance:

Inherit the Wind

For the client who believes we will see permanent estate tax repeal:

Die Another Day

For the client who really wants to be aggressive in his estate tax planning:

Catch Me If You Can

Dean John R. Price – Estate Planning With GRATs and Near-GRATs – Opportunities and Pitfalls of a Cloudy Crystal Ball
In designing GRATs consider establishing separate GRATs for separate classes or types of assets. Example: Contrast separate two year GRATs created January 1, 2001 with a tech stock and a gold mining stock.

Don't forget what Dick Covey terms the common law GRIT when your client has aunts, uncles, nieces, nephews or cousins whom he/she wants to benefit. These individuals are not family members for purposes of Chapter 14 and hence you escape the reach of 2702.

Walton creates an opportunity to have tremendous upside potential with little downside. It is particularly attractive in light of the uncertainty of the future of the transfer taxes.

Consider purchasing a term insurance policy as a hedge against premature death.

The private annuity trust cases directly relate to what Dean Price calls the "Variation on a GRAT" which he feels is extremely attractive. This involves the sale to an intentionally defective irrevocable (grantor) trust in exchange for a private annuity for a fixed term. The private annuity will be ignored for income tax purposes. This eliminates one of the serious disadvantages of private annuity transactions.

The annuity can be structured, much like a GRAT, to generate little or no gift tax results. To do so, the annuity agreement must provide that payments be made to the annuitant or to his or her estate for the entire term. If desired, the annuity payments could be graduated and increase by 20% a year.

The initial funding of the IDIT would have GSTT consequences so the grantor's exemption would have to be used to give the trust a "0" inclusion ratio. Also, another advantage is that unlike the GRAT the GST allocation occurs upon funding of the trust and we don't have the ETIP complications of the conventional GRAT.

The biggest advantage this variation offers over a GRAT would be the strength of the argument that only the discounted value of the remaining payments under the annuity for a term is includible in the annuitant's estate under Section 2033. Under the *Fabric, Stern and LaFargue* cases the taxpayer has a much stronger argument to avoid full inclusion of the trust assets.

If the grantor is married, consider using a GRAT that would qualify for the marital deduction if the grantor dies before the annuity term expires. The simplest, but least effective for estate tax minimization purposes, approach is to have the GRAT terminate upon the grantor's death and distribute its assets to the grantor's estate from which it will pass to or in a trust for the benefit of the surviving spouse. Another alternative provides that the annuity payment is the greater of a percentage or actual income of the trust. This may permit qualification for the marital deduction. Question: can this be set up so that only in the event of the grantor's death will the greater of the annuity payment or actual trust income be distributed. See Mulligan, <u>The Reinvigorated GRAT: Is a Sale to a Defective Trust Still Superior?</u> 29 Est. Plan. 379 (Aug. 2002).

RICHARD B. ROBINSON – Unwinding the Discount Entity: What to do When the Family Wants to Take the Money and Run?

We should be paying as much attention to the path for unwinding a FLP or FLLC as we do to the formation of the entity. Failure to do so can result in disastrous estate or income tax consequences. The family will want to liquidate the partnership immediately upon the death of the parent. However, that can have a disastrous impact on the estate's ability to take a marketability discount for estate tax purposes. Likewise, if the liquidation will take place within seven years of formation or contribution of appreciated assets to the partnership there may be deemed sale income tax consequences.

Note: There is no explicit "step in the transferor's shoes" rules for the excess distribution rules under Section 737(a) as there is for the built-in gain rules under Reg. § 1.704-4(d)(2). There is a disagreement among the commentators on whether there should be a step in the shoes rule for the excess distribution rules. See the argument Robinson offers at p. 12-4 that if the distribution consists of **<u>all</u> the step in the shoes property.** Robinson's conclusion is that you should postpone making the distribution until you are outside the seven year period that commences upon the contribution of the appreciated property to the partnership.

Think about when you want and don't want the valuation discount. It has a dramatic impact on basis step-up at death. It is generally desirable to get as much basis step-up as possible.

How Do We Allocate Basis Between a Controlling and Non-Controlling Interest in a Family Entity:

See Rev. Rul 84-53. The rules for basis are different than the rules for holding period. We could theoretically have a single basis for a partnership interest but have multiple holding periods for portions of that interest depending on when it was acquired.

What happens when the partnership interest is transferred, either by death or by gift. Reg. § 1.61-6 (a) provides that the single basis is allocated to the portion transferred and the portion retained based on the relative values of each interest. See the example at p. 12-22.

These rules prove that if you can keep your head when all around are losing theirs, then it is clear you really don't understand the situation.

RUSSELL ALLEN – JP Morgan Private Bank "What Do You Mean Subpoena? I'm a Lawyer! "

The three most common areas of controversy of concern to trust and estate lawyers should be: what constitutes legal advice; when is there a legitimate expectation of confidentiality; and when has the privilege been waived?

It is likely the IRS' efforts to discover or characterize a transaction as a sham or as a step transaction or arguments over the business purpose of a transaction will result in an increasing number of discovery requests of counsel concerning their efforts on behalf of and communications with clients.

The new tax practitioners' privilege is shrouded in ambiguity. This makes communication between a client and accountant the source for almost as much concern as it traditionally has been. Furthermore, anytime an accountant is involved in a communication the attorney-client privilege is at risk.

It is unlikely that an appraisal – whether obtained by the client or by the client's lawyer – can qualify for the privilege. See U.S. v. McKay, 372 F. 2d 174 (5th Cir. 1967).

How to minimize the risk of waiver of the privilege by having the lawyer hire "experts". See U.S. v. Kovel, 296 F.2d 918 (2d Cir. 1961) and U.S. v. Schwimmer, 892 F.2d 237 (2d Cir. 1989).

Inadvertent disclosure cases. Bank Brussells Lambert v. Credit Lyonnais (Suisse) S.A. 160 F.R.D. 437.

If the client uses the content of confidential communications to defend against a penalty assessment or fraud allegation, the client waives the privilege as to that and all related communications. The IRS will take the position that seeking an estate tax deduction for legal fees or other expert costs is a waiver of the privilege. See *O'Neal v. U.S.*, 258 F.3d 1265 (11th Cir. 2001).

Allen suggests that if a lawyer is engaged to prepare estate tax returns that the client may want to consider engaging separate counsel (whose fees he suggests will likely be non-deductible) to provide advice about matters that are likely to be controversial. He also suggests that consideration be given to retaining separate counsel if "hard questions" arise in the audit arena. Allen's approach is to have two experts – one to testify and one to deal with the "hard questions".

For planning purposes, trust and estate lawyers should assume that their communications with clients that involve advice concerning the law and application of the law to particular facts *may* enjoy protection under the attorney/client privilege **if** care is taken to make sure confidentiality is not waived. For instance, communications with any other professional advisor (accountant, appraiser, CLU, financial consultant, etc.) will probably not be privileged. Careful attention should be paid to how and from whom the lawyer requests, receives, analyzes and memorializes information. Particular attention needs to be paid to electronic communications. You may want to adopt a rule that you assume every electronic mail will be read by an audience much broader than initially intended. Waiving the privilege by disclosure to non-clients should be a constant concern. Likewise, disclosure of information to estate or trust beneficiaries can also raise the possibility of waiving the privilege.

SUSAN PORTER – US Trust Company

"One Percent, Two Percent, Three Percent, Four – No Matter What You Pay, the Bene Wants More"

Susan believes not enough attention has been given in literature and symposiums to the issue of designing trusts to be as flexible as possible in regard to discretion over trust distributions of income or principal. She also feels it is critical that we educate our clients on the breadth and depth of the discretionary powers they want to give the trustee and to help them focus on the final objectives for their trust.

She noted the limitations which trusts run into when ascertainable standards are used rather than giving independent trustees much broader powers. She reviewed some cases in which the court have not respected the "absolute" or "sole" discretion granted a trustee.

Thursday afternoon Workshop on Hot Topics

Martin E. Basson – IRS

The IRS know has a national coordinator for FLPs/FLLCs. They have five regional coordinators. They have a person in Washington, D.C. who makes the decision on whether to litigate. They have a monthly conference call for the agents on FLP/FLLC issues.

Mary Lou Edelstein – IRS - She is the national coordinator for the appeals officers for FLPs/FLLCs. They have different rules for different types of entities and circumstances. For instance, their range of settlement (not clear if this is their offer or where what they view as a cap on settlements). death bed and 2036 0% to 15%. Actual operating companies and active real estate – 35% to 40%. Marketable securities partnerships – 25% to 30%.

John W. Porter – Baker & Botts, Houston John's standard rule in answering audit requests. But they don't produce documents that are subject to the attorney-client privilege. This analysis is made on a case by case basis. Correspondence and bills are not provided. The new burden of proof rules require that we have cooperated with reasonable requests from the IRS to have the burden of proof shift to the government. Last ten years of bank statements. Porter will case the IRS agent and see if there is some other way to accomplish what the agent is after without it being so burdensome. He likes to document the agreement with the IRS on what is being produced and what is privileged and not privileged.

Martin Basson – About 18 months ago a Texas collection agent reported that there was an amazing number of cases in which there was a default. In Florida there was a tremendous number of defaults. What is happening now the government is being forced to protect its lien position. The letter will say file a bond or give us some property to file a lien against. The letters will be coming out of the Cincinnati service center in the very near future.

Transfer tax returns have been centralized in Cincinnati. There is a toll-free number for the estate and gift tax group. 866-699-4083. It is an automated service but they will call back. There is a small business/self employed tab under the IRS web site. Under that tab you will find the estate and gift tax group and its contact information.

Mary Lou Edelstein – Don't bury your best issue at the bottom or in the body of your appeal. Start off with your strongest argument. Make them very clear and very thorough. Attach as many exhibits as appear relevant. The exhibits aid clarity and add credibility. Keep in mind that ex parte rules in Appeals. The Appeals Officer is not allowed to discuss your case with a Compliance employee without your permission or presence. See Rev. Proc. 2000-43. Appeals Officers are encouraged to attempt a resolution with just one conference. Most officers will want to try to get as much resolved in the initial conference as possible with a hope that will be the only conference. You can also request fast-track mediation while the case is still in Compliance. If you have additional information which wasn't previously provided to the compliance officer, please get it to the Appeals Officer before your conference. Before you meet with the Appeals Officer, have a realistic assessment of your case and if possible a range of settlement percentages.
There is a post-appeals mediation process for large cases. Don't be afraid to extend the statute of limitations. Appeals is trying to address all cases as quickly as possible.

Norman Benford – Greenberg Traurig, Miami – Adequate disclosure

Follow the rules meticulously.

John Porter – Valuation Developments

Jameson was reversed by the Fifth Circuit (267 F.3d 366, 5th Cir. 2001). The Fifth Circuit rejected the Tax Court's strategic buyer analysis.

Estate of Dunn v. Commr. No. 00-6-614 (5th Cir. August 1, 2002) applied a dollar for dollar discount for unrealized capital gains when determining the value of a 64% interest in a closely held Texas corporation.

You may not get a dollar for dollar discount for pass-through entities because of the availability of the Section 754 election.

Martin Basson – The IRS will look at the capital gain exposure as part of the marketability discount. They don't feel it is appropriate to treat it as a separate discount.

John Porter TAM 200247001 – How do you value an IRA for estate tax purposes? The IRS felt that the 691 deduction takes into account the tax effects. There are a number of cases in audit where this issue is being argued.

S Corporation stock valuation cases – Gross (272 F.3d 333 – 6th Cir. 2001) and Adams (83 T.C.M. 1421 (2002). The Tax Court has refused to tax adjust the income stream from a S corporation under either of these cases.

There is another case, Heck (sp?) where the argument is being made that the marketability discount for a S corporation stock should be enhanced because of the statutory eligible shareholder limitations.

Basson and Edelsteing 2036 issues are going to be raised more frequently if the transferor doesn't keep some assets outside of the LP. They are going to look at whether there has been any co-mingling of funds and whether the partnership agreement has been strictly followed. They also will look at whether the distributions appear to be related to what the income realized by the transferor prior to formation. They are also going to look at the issue of whether there are disproportionate distributions. The liquidation during the pendency of the audit or appeal will generally result in a much lower settlement offer.

John Porter - Strangi is back in the Tax Court on remand. It was formed just two months before his death. Briefs have been filed now. We may see an opinion during the next 6 to 12 months.

John Porter - Kerr held that 2704(b) would not apply to the restrictions on liquidation and dissolution. Many planners have recommended having a charity as a limited partner to make 2704 (b) not applicable. That was the situation in Kerr because the University of Texas was a limited partner.

John Porter – McCord – this is a case pending in the U.S. Tax Court that involves a valuation definition clause.

John Porter – importance of the appraisal. Because the appraisal filed with the transfer tax return constitutes an admission of value by the taxpayers, it is important for the taxpayer to obtain well-reasoned appraisals from a qualified appraiser when the return is filed.

John Porter – in the area of undivided interests look at the Sels case and Baird case. Sels resulted in a 60% discount. It involved an undivided interest in 79,755 of acres of timber. Baird involved Louisana undivided timber. *Estate of Baird v. Commr.*, 82 T.C.M. 666 (2001). In that state you have to own an undivided interest of 80% or more to compel the harvest of the timber. Another important note about the Baird case was the fact the estate used an expert who was involved in the buying and selling of undivided interest in timber. His testimony was very persuasive.

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FINAL Report

This is the final report on the 2003 Heckerling Institute on Estate Planning. It contains several reports from Jason Havens.

Also, I received the following from Joe Hodges:

The Moderators of the ABA-PTL List wish to thank the following people for providing all of this year's reports:

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As we have done in January for the last six years, and again with the permission of the University of Miami School of Law Center for Continuing Legal Education, we will be posting to this list throughout the coming week highlights of the proceedings of the 37th Annual Philip E. Heckerling Institute on Estate Planning that is being held January 6-10, 2003 at the Fontainebleau Hilton Resort and Towers in Miami Beach, Florida.

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The URL for that site is http://www.law.miami.edu/heckerling.
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FINAL REPORT

The following report has been filed concerning the software vendors who are in the Exhibit Hall this year and other technology news by our on-site Reporter, Jason Havens, Esq. of Destin, Florida, the creator of the Legal Research for Estate Planners Web site (http://www.jasonhavens.net). This report continues the coverage of software and some other vendors who are exhibiting at the Institute. Although our reports do not include direct hyperlinks, we would recommend that users search for a particular vendor using a search engine such as Google (http://www.google.com).

Following are the highlights from the "third round" among the software and other vendors. These highlights are generally classified in categories that will hopefully prove helpful to list members. This final "round" concludes these reports for the 2003 Institute.

A. CALCULATION SOFTWARE:

(N/A for 2003 software report #3)

B. DRAFTING SOFTWARE:

1. Lawgic (continued): Lawgic is apparently offering a discounted renewal license to its users. Lawgic has also reestablished its customer service efforts. For basic users, a "Getting Started Guide" is available within the 2001 updated program and also via Lawgic's website. A "How To" question is also available at the beginning of the program on question number one ("Select An Activity"). Lawgic was featured during the Institute's Special Session on technology.

2. Datatech Software, Inc. (continued): ThinkDOCS (drafting) was also featured during the Institute's Special Session on technology.

3. LawontheWeb.com/Wealth Transfer Planning: I spoke with Jonathan Blattmachr, Esq., the author of LawontheWeb.com/Wealth Transfer Planning, which was historically an excellent drafting system and was mentioned in the Special Session's materials. I do not have any details for this final report, but will post an update on this drafting system on this list serve in the future which will likely be entitled "Wealth Transfer Planning Software Updated" (if a user wants to search the archives for this topic).

C. TRUST ACCOUNTING & RELATED ADMINISTRATION SOFTWARE:

1. The Lackner Group, Inc. (continued): The 6-in-1 Estate Administration System is a Windows- or Mac-based system that includes the latest tax preparation forms, including the new Form 1041. Lackner has also updated its system to anticipate all known "decoupling" states (i.e., those states that are deviating from the "pick-up" tax, based on the state credit for federal estate taxes, the process of which is probably summarized in another report and is definitely included in the Institute's materials prepared by Pam Schneider, Esq. and others). Lackner is compatible with the well-known File Maker Pro database program. The Lackner 6-in-1 Estate Administration System was featured during the Institute's Special Session on technology.

2. Datatech Software, Inc. (continued): Quick and Easy (tax preparation) was also featured during the Institute's Special Session on technology.

D. APPRAISAL & VALUATION SOFTWARE:

(N/A for 2003 software report #3)

E. RESEARCH SOFTWARE & SERVICES:

(N/A for 2003 software report #3)

F. MISCELLANEOUS VENDORS:

(N/A for 2003 software report #3)

If any vendors or any important developments were omitted that we should have mentioned, please stay tuned. We will attempt to cover all items of interest in future reports as time permits. Thank you.

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Following are the highlights from the Institute's Special Session on estate planning technology. These highlights are generally classified in categories that will hopefully prove helpful to list members. Some of these comments update the materials provided at the Institute's Special Session on estate planning technology.

E-MAIL and E-MAIL SOFTWARE PROGRAMS:

1. Eudora e-mail program: The Special Session mentioned Eudora, an e-mail program that offers much of the same functionality as popular e-mail programs such as Microsoft Outlook. (Please note that this vendor was not displayed at the Institute.)

2. McAfee Spam Killer: The Special Session also mentioned McAfee Spam Killer, a program that will evidently minimize and hopefully eliminate spam.

E-MAIL DISCUSSION LISTS

Besides this list, which is probably the premier list for professionals and others in the area of estate planning and administration, the following lists were also mentioned at the Special Session:

1. LISI/Leimberg Information Services, Inc.: These newsletters are authored by a number of well-known estate planning experts. The newsletters are not in a discussion-based format, but provide excellent coverage on a variety of topics.

INFORMATION MANAGERS:

1. Amicus Attorney: This program functions as an amazing organization tool. Amicus Attorney includes group calendaring, contacts management, and conflicts checking. The program also integrates with e-mail, billing, and word processing programs. Timers are included in each aspect of the program to allow for easy time tracking. The more advanced versions of the program also include synchronization with Palm- and Windows-based personal data assistants. All of these information management programs integrate with time and billing software such as Timeslips.

DOCUMENT ASSEMBLY:

Please see the technology reports from the Institute, which include many highlights on document assembly programs.

ESTATE PLANNING SOFTWARE:

Again, please see the technology reports from the Institute, which include many highlights on estate planning software.

TAX RETURN PREPARATION SOFTWARE:

Again, please see the technology reports from the Institute, which include many highlights on tax return preparation software.

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FINAL REPORT - SUPPLEMENTAL

This is an additional report from the 2003 Heckerling Estate Planning Institute.

It summarizes the Thursday afternoon breakout session entitled "Split-Dollar Life Insurance." The four panelists were
Lawrence Brody, Jonathan G. Blattmachr,Mary Ann Mancini and Michael Weinberg.

The editors wish to thank Mary Ann for providing this synopsis.

As we have done in January for the last six years, and again with the permission of the University of Miami School of Law Center for Continuing Legal Education, we will be posting to this list throughout the coming week highlights of the proceedings of the 37th Annual Philip E. Heckerling Institute on Estate Planning that is being held January 6-10, 2003 at the Fontainebleau Hilton Resort and Towers in Miami Beach, Florida.

A complete listing of the proceedings and speakers is available on the Institute's Web site.
The URL for that site is http://www.law.miami.edu/heckerling.
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REPORT - Supplemental report

Larry Brody began by introducing the panelists quickly by stating that they needed no introduction. He explained what the panel would try and cover during the 90 minute presentation. Mary Ann Mancini then began by providing an overview of what happened in the split dollar area in 2002. The year began with Notice 2002-8, a generally favorable Notice for taxpayers, but by the time of the issuance of the Proposed Regulations on Split Dollar in July, after six months of a struggling economy, corporate scandal and stories of excessive executive compensation, including split dollar plans, the Proposed Regulations were much less favorable than expected. Shortly thereafter a New York Times article drew the public's attention, including Congressional attention, to certain split dollar arrangements and Treasury and the IRS reacted by issuing Notice 2002-59 less than three weeks later. In the meantime, Congress passed the Sarbanes Oxley bill with its impact on split dollar, namely a prohibition on loans and extensions of credit to executives of publicly traded companies. The year closed with a Republican controlled congress and possible hearings on Sarbanes Oxley in the spring of 2003.

Jonathan Blattmachr then discussed Notice 2002-8, and the provisions of the same, including the favorable grandfather and transition rules of the Notice. He pointed out the different set of rules that apply to arrangements entered into before January 28, 2002 as opposed to the rules that apply for arrangements entered into after that date but before the issuance of Final Regulations. Arrangements entered into before January 28, 2002 have the most favorable provisions, including the ability to terminate the arrangement tax free before January 1, 2004, the ability to recharacterize the arrangement as a loan for all periods after January 1, 2004, the ability to continue to use P.S. 58 rates and the ability to continue to use the insurer's published premium rates. The rules for arrangements entered into after January 28, 2002 are less favorable (but still more favorable than the Proposed Regulations) and include the ability to elect the economic benefit tax regime or the loan tax regime and the ability to continue to use the insurer's published premium rates, with certain modifications.

Larry Brody then discussed some of the issues and ambiguities of Notice 2002-8, such as the requirement in the Notice that for pre-January 28, 2002 arrangements to take advantage of the grandfathering rules, the company must be entitled to receive full repayment of all of its payments. Larry also observed that taxpayers have received no guidance on when an arrangement is entered into, for purposes of grandfathering. Larry then addressed planning under Notice 2002-8 and when and if split dollar arrangements that fall under the Notice should be terminated or continued to be maintained and the factors that should be considered when making that determination.

Michael Weinberg then made a power point presentation on the planning opportunities under the Notice. His presentation began with a discussion on how tax efficient split dollar plans can be for funding the clients' needs for liquidity, such as the need to meet estate tax burdens, business continuity plans, buy-sell agreements, charitable bequests and installment sales. In addition to being tax effective, Notice 2002-8 also provided the taxpayer with flexibility since the taxpayer can now switch between a loan transaction and an economic benefit transactions. He then reviewed some sample cases that illustrated when the switch should occur and the consequences of the switch. Mike ended his presentation with six questions a client should ask his or her insurance agent to ensure that the agent has the requisite expertise to work on this type of transaction.

Finally, Mary Ann Mancini provided a brief synopsis of the provisions of the Proposed Regulations and some of the issues presented by these Regulations, such as the broad definition of a split dollar arrangement found in the Proposed Regulations and the confusing owner and deemed owner rules.

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