Report #20A (Bonus Supplement)

A complete listing of the proceedings and speakers is available on **the Institute's Web site**

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This is a Bonus Supplement to Report #20 since another report from the Friday morning session on Money Laundering that was sent to us yesterday did not reach us until after Report #20 had been sent out. In addition, Steve Leimberg of the LISI Newsletter Service has been kind enough to give us permission to publish excepts from the Heckerling 2005 Helpful Hints Memo by Steve Akers of Bessemer Trust Company that is being published in full on the LISI Service today at http://www.leimbergservices.com
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Are You Going to Have to Tell the Government About Your Client?
Friday Morning, 1/14/05
Presenter: Henry Christensen III, Esq.

Reporter: Shelly D. Merritt, Esq.

Mr. Christensen's presentation focused on the rules that many countries have adopted in an effort to combat international money laundering and how these rules may apply to attorneys.

The Financial Action Task Force on Money Laundering ("FATF") is an inter-governmental body which sets standards and develops and promotes policies to combat money laundering and terrorist financing. It currently has 33 members, including among others, the United States, Mexico, the United Kingdom, and the European Commission. The FATF has no legislative or executive authority, but simply makes recommendations for its members to adopt or not adopt as they see fit. The FATF's most important work product is its "Forty Recommendations to Combat Money Laundering." The Forty Recommendations consist of (1) amendments to legal systems to criminalize money laundering, (2) actions to be taken by financial institutions and other businesses and professions to prevent money laundering and terrorist financing, (3) institutional and other measures necessary to combat money laundering, and (4) steps to take for international cooperation.

(1) Changes to Legal Systems. The purpose of the first three Recommendations is to criminalize money laundering in all countries, both members and non-members of the FATF.

(2) Measures to be Taken by Financial Institutions and Others to Prevent Money Laundering. These involve 22 Recommendations dealing with steps to be taken by financial institutions and others, such as lawyers and other intermediaries and gatekeepers, to detect and prevent money laundering. Under these Recommendations, financial institutions are required to undertake customer due diligence measures, including verification of the identity of their customers when opening new business relationships or when undertaking large transactions. In addition, the financial institution is required to know the purpose of a transaction in which it is being asked to participate, and to refuse to participate in a transaction whose purpose the institution does not understand.

Recommendation 12 now applies some of these rules to, among others, lawyers, notaries, other independent legal professionals and accountants when they prepare for or carry out transactions for their clients concerning certain activities such as (i) buying and selling real estate, (ii) organization of contributions for the creation, operation or management of companies, and (iii) the creation, operation or management of legal persons or arrangements, and buying and selling of business entities. These provisions will also apply to most trustees, registered agents, and other professionals engaged in the financial markets.

In addition, Recommendations 13 and 14, which deal with the reporting of suspicious transactions and compliance with the rules, apply to lawyers, notaries, other independent legal professionals and accountants when, on behalf of or for a client, they engage in a financial transactions in relation to the activities described in Recommendation 12 above.

(3) Other Measures to Deter Money Laundering and Terrorist Financing. Recommendations 17 through 20 present a variety of foundation legal provisions to fight money laundering.

(4) Steps to Take for International Cooperation. Recommendations 26 through 32 deal with law enforcement, including the establishment by each country of a financial intelligence unit with which suspicious activity reports are to be filed, selecting which government agencies are to have enforcement authority, and assuring that they have all requisite authority.

It is important to note that none of the Recommendations have been adopted yet in the United States. However, they have been adopted in the European Union and in the United Kingdom. As a result, law firms with offices in countries that have adopted the Recommendations are subject to these rules. Where the Recommendations have been adopted, lawyers will need to obtain third party verification of identifying data on a client as well as knowing what the purpose is of a client transaction with which the lawyer is involved. The rules do not require lawyers to report on suspicious activities of clients if the lawyer is acting only as a lawyer. If the lawyer does more, such as acts as a financial intermediary, the lawyer will be subject to these rules.

The International Money Laundering Abatement and Anti-Terrorist Financing Act under the PATRIOT Act of 2001. Under this section of the PATRIOT Act, the Secretary of Treasury is authorized to designate specific non-U.S. jurisdictions, classes of transactions, financial institutions or types of accounts, as being of "primary money laundering concern" and to require U.S. domestic financial institutions and regulatory agencies to take one or more of five types of special measures. The Act also provides for due diligence requirements for correspondent and private banking accounts, certain foreign banks with correspondence accounts, a prohibition on correspondent accounts with "shell" banks, and maintenance of records relating to correspondent accounts with foreign financial institutions. A key issue is how the Act should apply to persons engaged in the real estate industry since Section 5312(a)(2) of Title 31 of the U.S. Code defining financial institutions, includes "persons involved in real estate closings and settlements." Comments have been filed by the ABA Real Property Section, the Florida State Bar Association Real Property Section, and others in the real estate industry. No action has been taken yet to determine how the Act should apply in this case.

Regulations that are being adopted under 31 U.S.C. Section 5318(h) require every financial institution to have internal policies and rules to combat money laundering. The statute and regulations provide for four minimum requirements: (1) the institution must develop internal policies, procedures and controls to combat money laundering; (2) the institution must designate a compliance officer who has charge of the institution's anti-money laundering efforts; (3) the institution must have an ongoing employee training program to combat money laundering; and (4) the institution must establish an independent audit function to test anti-money laundering programs. With respect to the real estate industry, there is not yet consensus as to who these rules will apply to. For example, will they apply to lenders, title companies, building inspectors, environmental consultants, and lawyers? Treasury has advised that it does not intend any regulations to apply to lawyers unless they "touch money." The question is what does "touch money" mean?

The Act requires that regulations be adopted by Treasury setting forth the minimum standards for financial institutions and their customers regarding the identity of the customer that will apply in connection with the opening of an account at a financial institution. One question is who are the "account parties" for a trust? Mr. Christensen concludes that unless the trust is a grantor trust, the account party of a trust should be the trustee since the trustee owns the trust assets and has the authority to dispose of the assets.

While there are no direct provisions of the USA PATRIOT Act which apply expressly to lawyers, where a lawyer is acting other than as a lawyer, some provisions of the Act are likely to apply. Outside of the PATRIOT Act, Lawyers are required to file Forms 8300 if they receive a transfer on behalf of a client of currency in excess of $10,000. In addition, they are also subject to the Trading with the Enemy Act, the Internations Emergency Economic Powers Act, and various special acts which impose sanctions on trading with certain countries, and persons who are residents in those countries.

It should be noted, that other countries who are members of FATF have adopted similar rules (i.e. the European Union, United Kingdom, and Canada). If the law firm has offices in these countries, it may be subject to some of these rules.

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Leimberg LISI Newsletter Service
Heckerling 2005: Helpful Hints
By Steve R. Akers, Managing Director and Associate Fiduciary Counsel, Bessemer Trust Company

NOTE: Portions edited out for purposes of this Report are denoted by <<SNIP>>.

The 39th Annual Philip E. Heckerling Institute on Estate Planning the week of January 10, 2005 was outstanding. Some of my observations from the week are summarized below. I attribute all the good ideas to other speakers at the conferenceand I have not researched the various issues to confirm the correctness of or to endorse all of the ideas presented by the various speakers. The summary includes some substantive items that I found interesting and includes a wide variety of interesting and creative planning strategies.

In addition, a more detailed summary of rough notes of some of the presentations is available in a separate document. This more detailed summary also includes some observations from private informal conversations that I had with others throughout the week. Unfortunately, the “rough notes” document is rather long. But if you are interested, you can get much of the benefit of my week at Heckerling by reviewing this document.

1. Prospects of Estate Tax Repeal. Right after the election, administration officials informally said the estate tax would be repealed, and indeed complete repeal might be moved up to 2007. At the least, the repeal would be extended to 2014, and with 5 years of no estate tax, the estate and gift tax division of the IRS would effectively be dismantled and
it would be difficult to reinstate it. However, there are more recent
indications that the estate tax might not be repealed. Current “polls”
indicate that 59 senators (not the 60 required to overcome a Byrd amendment

vote) are in favor of permanent repeal of the estate tax.

2. Using Substitution Power Under Code § 675(4)(C) as a Grantor Trust Trigger.

a. Advantage of Giving Substitution Power to Grantor's Spouse. (1) Avoids an argument by the IRS that the trust assets are includible in the grantor's gross estate under 2036-2038 as a result of the grantor having a substitution power. (2) A substitution power held by third parties raises the question of whether the IRS might at some time argue that it does not qualify as a right to RE-acquire assets, because powers held by the grantor's spouse are treated as also being held by the grantor for purposes of the grantor trust rules. (However, various PLRs [such as PLR 2004 34 012] have approved third party substitution powers as causing grantor trust treatment.)

b. Potential 2036 Inclusion. In a recent ruling request, the grantor had a substitution power in a non-fiduciary capacity under an irrevocable trust agreement. The IRS refused to issue a ruling that the substitution power would not cause inclusion of the trust assets in the grantor's estate under §2036 unless the parties agreed and a court reformed the trust to provide that the substitution power could only be exercised in a fiduciary capacity. (Of course, the substitution power would then no longer trigger the grantor trust rules for income tax purposes.) This is not a situation where the IRS took the position in an actual audit or in litigation that a substitution power in a non-fiduciary capacity triggered section 2036. However, it is a recent example where the IRS refused to give the blessing of a PLR, and might suggest some rethinking by the IRS about this issue.

c. Crummey Withdrawal Powers in Grantor Trusts; Grantor Trust Provisions vs. Section 678 Power. Despite arguments from the literal statutory language (the exception in section 678(b) refers to a power over income, but a Crummey withdrawal power is a power over corpus), various rulings have indicated that the grantor trust provisions will "trump" a section 678 power attributable to a person holding a Crummey withdrawal right that lapses. E.g., PLRs 200011054; 9309023; 9321050. However, this issue was raised in the PLR request described above, and the IRS said informally that this issue was "in a state of flux." If it is really important that a trust be a wholly grantor trust as to the grantor, do not use a Crummey withdrawal power.

3. Use Grantor Trusts for Split Purchase Transactions.<<SNIP>>

4. Sale to Grantor Trust.<<SNIP>>

5. Grantor Trust Selling Call Option to Grantor or Grantor's Spouse.<<SNIP>>

6. Grantor Trust Treatment for Grantor's Spouse Following Grantor's Death.<<SNIP>>

7. Miscellaneous FLP Issues.

a. Allegation by IRS that Anticipated Estate Taxes Must be Considered to Avoid §2036. The Bassler case was tried in TX before Judge Thornton. The decedent contributed $35m to the FLP and kept $6m for living expenses. IRS argued that she needed to retain assets to live on AND to pay estate taxes in order to avoid § 2036(a)(1). The IRS wanted to introduce into evidence a cash flow summary including estate taxes (which the court did not allow to be introduced into evidence). (The case was settled after trial.)

b. Section 2036(a)(2) Not Being Argued Where Decedent Only Retained Limited Partnership Interest. In disturbing language, Judge Cohen in the Strangi case intimated that even the right to vote on liquidation as a limited partner would be a retained right to designate under §2036(a)(2), because the limited partner can vote "in conjunction with" others to liquidate. However, the IRS is not alleging in audits that retaining a small limited partnership interest triggers §2036(a)(2).

8. Income Tax Issues Regarding FLPs.

a. Mandated §754 Election. The 2004 Jobs Creation Act provides that the §754 election is mandated at the death of a partner if the partnership holds assets with a built-in loss of over $250,000 (i.e., if the partnership's adjusted basis in the partnership property exceeds the property's fair market value by more than $250,000), unless the partnership is an "electing investment partnership" (examples would be venture capital funds or fund of funds in which 95% of the investments are made in cash pursuant to a private offering). This is NOT triggered by the step down of a deceased partner's basis in his or her partnership interest as a result of valuation discounts.

b. Basis Transfer Upon Transferring Interest in FLP. If a partner transfers part of his or her entire interest, only a part of his or her basis is transferredbased on the fair market values of the partnership interests, not liquidation values. So if a parent transfers a 20% interest to a child, with discounts, less than 20% of parents' basis passes to the child.

c. Income Tax Effects of Liquidation.

(1) If Sell Assets and Distribute Cash. If the partnership sells assets, the gain passes through to partners. If there is built-in gain at the time of contribution, the built-in gain from specific assets must be allocated to contributing partners (or their successors), then there is a distribution of cash. If the distribution of cash to a partner exceeds the outside basis of that partner, the excess is capital gain.

(2) If In Kind Distribution of Assets.

(i) Distribute Asset to Another Partner Within 7 YearsGain to Contributing Partner. If a partner contributes built-in gain or loss property, and within 7 yrs the partnership distributes the asset to another partner, the contributing partner must recognize the gain or loss.
§704(c)(1)(b). For purposes of this rule, a successor in interest inherits this potential liability. So if H gives a partnership interest to his son, the son picks up liability for gain under this section if the asset is later distributed from the partnership to some other partner. If an asset is going to be distributed to someone other than the contributing partner (or his successor in interest), generally wait 7 years before the distribution.

(ii) Distribute Different Asset to Contributing Partner Within 7
YearsContributing Partner Recognizes Built-In Gain. If a partner
contributes built-in gain assets, and the partnership within 7 yrs distributes any non-cash property back to the partner other than the contributed asset, then the contributing partner realizes the built-in gain
on the contributed asset. §737. This is a disguised sale rule. The
contributing partner is treated as effectively selling the originally contributed property. There is also a contributing partner exception to this rule--if the built-in gain asset goes back to contributing partner. However, there is not an explicit successor in interest rule like there is under § 704(c)(1)(b).

(3) Distribution of Marketable Securities. A distribution of marketable securities is treated as a

distribution of cash. §731(c). A seven-year wait does not help with this rule. There are several exceptions to this rule, including (i) a contributing partner exception (there is no explicit application of this exception to successors in interest), and an investment partnership exception.

(4) Avoid 7-Year Rules By Using Grantor Trusts. The complicated 7-year rules can be avoided entirely if all partners in the FLP are the grantor and grantor trusts.

9. Circular 230.

a. Overview. The circular announces requirements designed to attack tax shelters. The proposed notice referred explicitly to tax shelters, but the final regulations do not refer to tax shelter opinions, but rather to "covered opinions," and there is concern that some of the requirements may apply to standard written communications between tax advisors and clients.
There are "best practices" that are applicable to all advisors. While the "best practices" are not mandatory, it is likely that the plaintiff in any malpractice action would point to any failures of a practitioner to meet the best practices. There are mandatory strict standards for "covered opinions." Sanctions include censure or disbarment from practicing before the IRS.

b. Written Advice. The standards apply to "written advice" which includes email. Written advice is not limited to formal legal opinions, but includes any writings.

c. Covered Opinions. The strict standards apply to "covered opinions." This is a precisely defined term that includes "written advice"
concerning one or more federal tax issues arising from:
(1) a listed transaction [these are tax shelter transactions that the IRS has previously identified];
(2) any plan or arrangement where avoidance or evasion of any tax is a principal purpose; [It seems likely that day to day advice by estate planning practitioners may not be included in this category, because there are typically principal purposes other than just tax avoidance.]
(3) any plan or arrangement where avoidance or evasion of tax is a significant purpose, if the written advice is, among other things, a "reliance opinion," which is written advice that concludes at a confidence level of at least more likely than not that one or more significant federal tax issues would be resolved in the taxpayer's favor. The writing will not be treated as a "reliance opinion" if it has bold face disclaimer in a font larger than any other font in the advice, at the beginning of the advice, that it was not written to be used and cannot be used for the purpose of avoiding penalties.

Observation: It would seem that many written communications between tax advisors and estate planning clients may satisfy the "significant purpose"
test because one of the significant purposes of the transactions is to be as tax efficient as possible. However, written communications would not seem to come within the "reliance opinion" category if they do not give a "more likely than not" prediction on the likelihood of success on tax issues. Even if the advice does include a "more likely than not" confidence level of prevailing on tax issues, the advice will still avoid being classified as a reliance opinion if a bold faced, large font disclaimer is placed at the beginning of the advice. (However, the client then could not rely on the communication to establish good faith or reasonableness for the purpose of avoiding tax penalties.)

Conclusion: Unless the written advice comes within the "principal purpose"
category or comes with the "reliance opinion" category by including a "more likely than not" prediction of success on tax issues, many written communications with estate planning clients apparently will not be "covered opinions."

d. Requirements for Covered Opinions. If a written advice is a “covered opinion” as defined above, there are various strict requirements that the writing must meet. One of those requirements is that the written advice evaluate all significant federal tax issues and reach a conclusion, supported by the facts and the law, as to the likelihood that the taxpayer will prevail on the merits with respect to each significant federal tax issue. If the tax advisor is not giving a formal opinion letter, the advisor probably will not want to include an exhaustive analysis of all significant tax issues in many informal client communications. If not, it would be important to avoid having the advice classified as a “covered opinion.”

e. General Standards for Written Advice That is Not A Covered Opinion. (Observe, this applies to ALL written advice.) A practitioner cannot provide written advice if he (1) bases it on unreasonable factual or legal assumptions; (2) unreasonably relies on representations of the taxpayer or others; (3) fails to consider relevant facts; or (4) takes into account the possibility that a tax return will not be audited, that an issue will not be raised on audit, or that an issue will be settled. [Accordingly, written communications should never refer to “audit lottery” or settlement types of considerations.] Broad circumstances will be considered in determining whether a practitioner has failed to comply with these requirements.

10. Inclusion of Capital Gains in DNI. The definition of income regulations provide that an allocation of capital gains to DNI will be respected if the allocation is allowed either under the governing instrument OR state law. If the trustee has the authority under the instrument to make discretionary distributions of corpus to the beneficiary, the trustee can deem a distribution to be out of capital gains and therefore be included in DNI. However, the election must be “consistent.” Therefore, the first time the issue arises, the trustee will make an election that is probably binding for all similar later distributions. The election need not be consistent for different “classes” of assets. It is not clear whether this means that different elections can be made for a distribution of Exxon stock vs. IBM stock. However, the regulations do not address what “classes” means, and that may refer to big differences in classes, such as stock vs. real estate.

11. GRAT Planning Issues.<<SNIP>>

12. Fiduciary Investment/Liability Issues.<<SNIP>>

13. Spendthrift Protection Issues for Trust Beneficiaries.

There is a distinction between a beneficiary’s creditor’s ability to reach trust assets based on whether the trust is a discretionary trust or a support trust.

For a “discretionary trust,” the trustee has absolute discretion over distributions. The beneficiaries have no property right in the trust because they cannot enforce a standard for distributions. The cases have generally recognized 100% protection against the beneficiary’s creditors for discretionary trusts, even if the trust does not have a spendthrift clause.

A “support trust” has a standard for distributions--often health, education, support, or maintenance. Creditors of beneficiaries of support trusts can step into their shoesand request a court to order a distribution of assets (pursuant to the standard) to pay their debts, if the trust does not have a spendthrift trust. But if the trust has a spendthrift clause, the trust is protected against most creditors.

There are several categories of “exception creditors” that can reach assets in “support trusts” even if there is a spendthrift clause. Most states recognize three: (1) Alimony or child support claimants; (2)

Necessary services such as medical service claimants; and (3) Claims by the United States or a state for moneys owed (such as a tax lien). There is a 4th exception that is recognized in the Uniform Trust Code but is not recognized in most statesfor services or materials that preserve the beneficiary's interest in the trust.

14. Trust Created By Client's Parents.<<SNIP>>

15. Creditor Effects of FLP or LLC; Charging Order vs. Foreclosure Remedy.<<SNIP>>

16. Tenancy by the Entireties Property Not Protected Against Federal Tax Claims. <<SNIP>>

17. Graegin Notes. <<SNIP>>

18. Section 6166 Issues.<<SNIP>>

19. GST Planning Issues

a. Automatic GST Exemption Allocation. If there is any question whatsoever as to whether a trust is a "GST trust" under the automatic allocation rules, a return should be filed in the first year of a transfer involving that trust and make a clear election as to whether to have automatic allocation apply. Then, there is no worry as to whether the trust is a "GST Trust" to which the automatic allocation rules apply inadvertently.

b. Mere Power to Allocate GST Exemption to Future Transfer to a Trust May Conceivably Cause Estate Inclusion of the Trust Assets. The mere power to allocate GST exemption to future transfers to a trust could conceivably cause the grantor to have a §2036(a)(2) power over the trust. If a trust provides different terms for exempt and non-exempt trusts created under the instrument, the donor's power to later allocate GST exemption (and thereby shift assets from the non-exempt to the exempt trust) may be deemed to be a power to control disposition that causes estate inclusion. One solution is to have identical dispositive provisions in the non-exempt and exempt trusts, and give an independent third party the flexibility to create different dispositive provisions. For example, the exempt and non-exempt trusts could both be lifetime trusts, and an independent party could have the power to provide that the non-exempt trust would terminate at an earlier time.

A similar problem can arise with an executor-beneficiary's power to allocate GST exemption. If the beneficiary is the executor of the estate and has the power to allocate GST exemption, and if the allocation causes more or less assets to be subject to a general power of appointment, the executor's power could conceivably result in the executor having a general power of appointment. One solution: Mandate how GST exemption must be allocated. Allow the executor to appoint an "independent" executor that would have expanded authority to deviate from the "mandatory" allocation provisions.

c. Utilizing GST Exemption Without Making a GiftReverse Lifetime QTIP and GRATs. These are various ways to utilize the difference between the GST exemption and the $1.0m gift exemption. These include using a lifetime reverse QTIP trust (which would permit allocation of the donor's GST exemption without making a taxable gift), and GRATs.

If a lifetime reverse QTIP trust is used, make sure that any estate taxes at the surviving spouse's death are paid from another source. Also, if the spouse dies first, the spouse can appoint the assets to a trust for the client’s benefit (an example in the regs makes that clear). A problem is how to make the trust a grantor trust as to the surviving spouse after the donor spouse’s death. One possible strategy would be to contribute the trust assets to an S corporation and make the QSST election. All Sub S income will be taxed to the spouse under the QSST rules. (Observe, this is a way generally to cause a trust to be a grantor trust as to a beneficiary of the trust.)

d. Strategic Decision To Use a Non-Qualified Severance in Order to Delay Taxable Terminations. Non-qualified severances can be used as a planning strategy. For example, assume a trust is in existence for all descendants for two years, then divides into separate shares for issue per stirpes. That is all treated as one trust unless there is a qualified severance, so there is no taxable termination until all of the children have died. If the settlor had created separate trusts for each child at the outset, a taxable termination would occur for each trust when the child-beneficiary of that trust died.

e. GST Effects of Split Gifts. There are different split gift rules for gift and GST tax purposes. For gift tax purposes, gifts to a spouse, including gifts in trust, cannot be gift split (although a trust with an interest of the spouse that is ascertainable in value can be severed, permitting the remaining trust interests to be gift split.) For GST purposes, however, the gift is split 50-50. So if the spouse is a beneficiary as to 99% of the trust, then for gift purposes, the donor may only gift split as to 1%, but for GST tax purposes, the spouse is treated as the donor as to ½. For GST purposes, is it clear that each spouse is treated as the transferor of ½ of the assets under a split gift.

f. Section 529 Plans. If a Section 529 plan is originally designated for the donor’s child, and the beneficiary is later changed to another person, the child (not the original donor) is treated as the transferor making a gift to the grandchild.

g. Ways to Benefit Grandchildren Currently Without Making a Taxable Distribution. Sometimes the client really want to benefit skip persons currentlywithout making a taxable distribution. Examples of ways to do that include:
(1) Distribution to school for tuition or to medical provider;
(2) Trust acquires a personal use asset in which skip person resides free of rent;
(3) Appoint a skip person as a co-trustee and pay compensation;
(4) Make distributions to skip persons out of another trust that does not cause GST tax, and make compensating distributions to child- level beneficiary from the non-exempt trust;
(5) Add the spouse of the deceased child as a discretionary beneficiary and make a distribution to the spouse who would provide benefits for grandchildren;
(6) Invest in enterprises of a skip person;
(7) Low interest loans to a skip person;
(8) Give the flexibility to permit terminating adjustments to take into account disproportionate distributions among siblings, so there will be no pressure to limit distributions to child-level beneficiaries to amounts that can be made available to skip beneficiaries without incurring GST tax.

h. Granting General Power of Appointment to Child to Avoid GST Tax. One method of delaying a GST transfer is to cause assets to be in the estate of the child-level beneficiary. However, with decoupled state estate taxes, giving a child a general power of appointment will often will be more costly than just subjecting the assets to the GST tax.

20. Planning With Disclaimers to Give Beneficiary Possibility of Utilizing Charitable Income Tax Deduction.<<SNIP>>

21. Planning For a Fair Distribution Policy and Investment Allocations.<<SNIP>>

22. Selling Life Insurance Policy.<<SNIP>>

23. Planning Strategies From Case Study Involving Closely-Held Business.<<SNIP>>

24. Rethink Always Using Ascertainable Standards. Planners often use health, education, support and maintenance standards for distributions, even if the beneficiaries are not the trustees. However, using an ascertainable standard makes the assets more vulnerable to creditors claims of the beneficiaries. If child is not going to be the trustee, seriously consider not using an ascertainable standard.

25. Numbers of Estate Tax Returns. The IRS, Statistics of Income Division, October 2004 report shows how few estate tax returns are filed each year for large estates. For estates between $5.0 to 10.0 million, there were only 3,732 returns filed in 2003 throughout the entire country. Of those, only 902 included interests in limited partnerships,
1,048 included closely held stock, and 708 included "other noncorporate business assets."

For estates between $10 to 20 million, there were 1,293 total estate tax returns filed in 2003. Of those, 444 included limited partnership interests, 485 included closely held stock, and 359 included other noncorporate business assets.

(Charts including the numbers of estate tax returns with breakdowns by categories of assets and deductions can be located at the IRS website [www.irs.gov], at the tab for Tax Stats, under the heading for the Year 2003.)

Our on-site local reporters who are present in Miami this year are Gene Zuspann Esq. of Zuspann & Zuspann in Denver, Colorado, Shelly Merritt Esq., a solo practitioner in Boulder, Colorado, Connie T. Eyster Esq. of Hutchinson, Black & Cook LLC in Boulder, Colorado, Jason Havens Esq. of Havens & Miller PLLC in Dustin, Florida, Bruce Stone of Goldman, Felcoski & Stone, PA of Coral Gables, Florida, Herbert L. Braverman Esq. of Walter & Haverfield LLP in Cleveland, Ohio, and Jeffry L. Weiler of Benesch, Friedlander, Coplan & Aronoff LLP of Cleveland, Ohio. The editor again this year will be Joseph G. Hodges Jr. Esq, a solo practitioner in Denver, Colorado who is the Chief Moderator of the ABA-PTL List.

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