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A Quarterly Legal Newsletter from
Querrey & Harrow

Fall, 2012

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Estate Planning Update - Consider Making Gifts in 2012

By: Tom Kaufmann, Shareholder - Chicago, Illinois office

Under current law, individuals have a very clear incentive to make lifetime gifts in 2012. The gift tax lifetime exclusion has increased from $1 million to $5.12 million, and the gift tax rate has been reduced to 35 percent. On January 1, 2013, the gift tax exclusion is scheduled to return to $1 million with the top gift tax rate returning to 55 percent.

The increase in the gift tax exclusion and the reduction in gift tax rates allows clients to make lifetime transfers of a greater aggregate value free of gift tax in 2012 than they could previously.

Additionally, as noted, a lifetime gift of the donor's assets has the beneficial effects of (1) shifting any post-gift appreciation and income to the donee for income tax purposes and (2) avoiding the imposition of gift or estate tax on such appreciation and income that would have occurred if the gift transfer had been delayed until a later year or the asset had been included in the donor's estate. Accordingly, lifetime gifts make good estate planning sense.

If you wish to meet with one of our estate planners about your estate plan, please contact Tom Kaufmann at 312.540.7572.

* * *

Tom Kaufmann *is a shareholder and Chair of the firm's Estate Planning and Corporate/Commercial Practice Groups. He has represented high net-worth individuals for many years and has established thousands of trusts and other asset protection instruments. If you have questions regarding this article, please contact Tom via email at tkaufmann@querrey.com.*

RECENT CASE SUCCESSES

Tom Burke Obtains Great Result for Commercial Carrier

Shareholder **Tom Burke** recently obtained an excellent result at trial for a trucking concern following an accident in Kankakee, Illinois. In the case, the client's driver was backing up on a two-lane highway to turn into a driveway so that he could go back in the other direction. He struck the plaintiff's vehicle while traveling in reverse, and never saw her before impact. Plaintiff claimed that she stopped about 40 feet behind our driver and was there for about three minutes before the impact. The driver claimed that Plaintiff was stopped within inches of his bumper and that he did not see her when he got out of the vehicle to assess whether the driveway was suitable for his truck.

The plaintiff had over $200,000 in medical special damages for complex back surgery. Although she disclosed that she had prior back surgery in 1973, she failed to disclose to her treating physician that she was on Social Security disability for the condition of her back after the back surgery. The court prohibited the carrier defendant from bringing in evidence of an accident that Plaintiff was involved in five months after the alleged incident being litigated, despite the fact that Plaintiff claimed a back injury and settled with the later defendant. Tom successfully impeached the plaintiff with her Social Security disability records in which she complained that she had constant back pain which limited her ability to walk, sit or stand.

Plaintiffs asked the jury for $890,000. The jury awarded $15,000, reduced by 49% contributory negligence for a total award of $7,650.

Product Liability Update - How Safe is Safe?

By: Bruce H. Schoumacher, Shareholder - Chicago, Illinois office

In a recent product liability case, the Illinois Appellate Court considered what steps a manufacturer should take to assure that its product is safe. There, the court held that under certain circumstances a guard may not be sufficient if it can easily be removed. *Perez v. Sunbelt Rentals, Inc.*, 2012 IL App (2d) 110382.

In *Perez*, the plaintiff was a painter at a construction site. He was using a scissor lift and fell from it, incurring serious injuries. The scissor lift had a guard gate, which had been removed before the plaintiff used the lift. The plaintiff sued several parties, including the manufacturer of the scissor lift.

The plaintiff alleged that the lift was defective, because the guard gate "could be easily removed." The manufacturer filed a motion for summary judgment, claiming that it was not reasonably foreseeable that the gate would be removed. The trial court granted the motion and the plaintiff appealed.

The plaintiff opposed the manufacturer's motion for summary judgment, claiming that it could be easily removed. The manufacturer argued that removal of the guard gate was not reasonably foreseeable, because the gate was attached to the railing with a bolt, nut, and locking pins. The manufacturer stated that the gate could only be removed by using a wrench and screw driver, and thus, removal of the gate was not reasonably foreseeable.

Although the plaintiff did not refute the manufacturer's contention that the guard gate was secured to the rail with a bolt, nut and locking pins, the court still held that removal of the gate was reasonably foreseeable. The court noted that the need to use tools to alter the product was not determinative of the issue of foreseeability, especially where common tools could be used to remove the gate. The court declared "that where there is no evidence that special expertise is needed to make the modification or that the modification is especially complex or time-consuming, a genuine issue of material fact exists as to the foreseeability of the modification and the question is best presented to a jury."

* * *

***Bruce Schoumacher**, a shareholder in our Chicago office is the Group Co-Chair of the Construction Practice Group and also practices in several other areas, including professional liability, product liability, commercial litigation, and antitrust. He works with a variety of professionals, including architects, engineers, contractors and manufacturers. He has recently been recognized by his peers and named as a Leading Lawyer in the area of construction law.*

Bruce is distinguished as AV® Preeminent™ Peer Review Rated by Martindale-Hubbell. Besides construction litigation, he works regularly with owners, contractors and design professionals drafting and negotiating construction contracts and professional services agreements. He recently drafted standard form agreements for an industrial equipment manufacturer, including sales terms, purchase terms, equipment test and rental agreements and sales representative agreements. He has extensive experience drafting international and domestic commercial contracts, design agreements, sales representative contracts, repair agency agreements, distributor agreements and fabrication agreements.

Bruce can be contacted via email at bschoumacher@querrey.com.

Schoumacher Speaks to Illinois Institute of Continuing Education and Society of Illinois Construction Attorneys

Bruce Schoumacher spoke on September 21, 2012, on the topics of ethics and professionalism at a seminar on mechanics liens presented in Chicago by the Illinois Institute of Continuing Education and the Society of Illinois Construction Attorneys.

Municipal Law Update: School District Violated First Amendment in Holding Graduation Ceremony at Church

By: Joshua T. Barney, Associate – Chicago, Illinois office

The Establishment Clause of the First Amendment to the Constitution of the United States provides that "Congress shall make no law respecting an establishment of religion." Reviewing a case en banc, the Seventh Circuit recently ruled in *John Doe v. Elmbrook School District,* Case No. 10-2922 (7th Cir., Jul 23, 2012), that a school district in Wisconsin violated the Establishment Clause by holding high school graduation ceremonies at a local Christian church. This case exemplifies the impermissible governmental use of church-owned facilities.

The Elmbrook School District is a municipal public school district centered around Brookfield, Wisconsin, a suburb to the west of Milwaukee. In 2000, senior class officers at Brookfield Central High School requested that its graduation ceremony be held at a new location, believing that the previous venue - the school's gymnasium - was too hot, cramped, and uncomfortable. Seeking a better alternative, the student officers requested that the ceremony be held in the main sanctuary of Elmbrook Church, a local non-denominational, evangelical Christian religious institution. The school's principal and the District's superintendent agreed and the graduation was held at the church. Subsequent graduations were also held there. Brookfield East began holding graduations at the church from 2002.

The atmosphere of the church, both inside and outside the sanctuary, is strongly Christian. Crosses and other religious symbols abound on the church grounds and the exterior of the church building, and visitors encounter these symbols as they drive to the parking lot and walk into the building. To reach the sanctuary, visitors must pass through the church lobby, which also served as a natural congregation point for graduates and their guests after the ceremony.

Querrey & Harrow Welcomes Associates Joshua Barney and Douglas Giese

Querrey & Harrow welcomes **Joshua Barney** as an associate to its Chicago office. Josh was sworn in to practice as an attorney in the State of Illinois in November, 2011. Josh will concentrate his practice in general civil litigation, including products liability, insurance coverage, and bankruptcy and creditors' remedies.

Josh is a member of the Chicago Bar Association, the American Bar Association, and the Turnaround Management Association. He received his JD from DePaul University College of Law in 2011 and his BA from the University of Michigan in 2007.

Douglas Giese is an associate attorney in its Chicago office and practices in general civil litigation, in both state and federal courts, with a focus on creditor's rights and post-judgment enforcement. Mr. Giese has handled all types of business disputes, including breach of contract, mortgage foreclosure, mechanic's lien enforcement and defense, and obtaining and enforcing judgments.

Douglas is an active member of the Illinois Creditors Bar Association and Chicago Bar Association, and a volunteer attorney with Chicago Volunteer Legal Services as a panel referral attorney. He is also a certified mediator through the Center for Conflicts Resolution, and has represented clients in ADR before the American Arbitration Association and other private alternative dispute resolution panels.

Douglas obtained his JD from IIT-Chicago Kent College of Law in 1997, his paralegal certificate from Roosevelt University- Legal Assistant Program in 1989, and his BS in Business Operations/Personnel Management from Northern Illinois University in 1987.

The lobby contained tables and stations filled with evangelical literature. On at least one occasion, church members handed out pamphlets for the church and its programs. Religious banners, symbols, and posters decorated the walls. During the ceremonies, graduating seniors sat down in the front, center rows of pews, while guests sit in the other pews. Bibles and hymnal books remained in all the pews. As a matter of church policy, the church refused to cover the permanent religious fixtures.

The plaintiffs were current and former students and their parents, none of whom were Christians. They sued the school District for violating the Establishment Clause by endorsing a religion as a government agency. By holding the commencement in a church, the plaintiffs argued that the school District had tacitly endorsed Christianity, and in effect imposed the church's religion upon them. According to the plaintiffs, there were many other secular venues available that the District could use for its graduation ceremonies.

The District argued that it never endorsed any religion, but rather used the church because of the space and features that it provided. Since it was merely renting the space, the District insisted that it could not be held responsible for the decorations of the church. Despite its efforts to find alternative venues, the District further argued that none were able to offer comparable accommodations at the church's price.

The district court granted the District's motion for summary judgment, holding that the District was not engaging in religious coercion of the sort that would violate the Establishment Clause. It reasoned that, because there was no religious exercise at the church graduation ceremonies, there was no coerced religious participation. The plaintiffs' unease and offense was not enough. The plaintiffs' appeal was initially heard by a three-judge Seventh Circuit panel that upheld the district court's ruling by a 2-1 vote. The appeal was then presented to the Seventh Circuit for a hearing *en banc*

The *en banc* Seventh Circuit panel reversed the decision by a 7-3 vote, setting up a likely appeal to the United States Supreme Court. The *en banc* panel found that the use of the church and its Christian imagery would lead a reasonable person to assume that the District had in fact endorsed the church and its religious message. The panel found that holding the ceremony in the religious space was enough to amount to religious coercion due to the overwhelmingly Christian setting. The panel was quick to note that this was a fact sensitive analysis and that not all secular activities held in a religious setting would amount to coercion, but that this Christian setting did appear to amount an impermissible endorsement of the church by the District.

The dissent argued that the use of the church served a legitimate secular purpose. They contended that the District needed a large, air-conditioned auditorium for graduation and that the only message a reasonable person would perceive is that comfortable space is preferable to cramped, over-heated space. Furthermore, it contended that courts have traditionally found coercion or endorsement when the governmental agency has asked for active participation in a religious activity, and here the District made no such demands. The dissenters took great care to point out that churches are regularly used, as polling places, a sacrosanct governmental activity, and the legitimacy of that venue for use as such is considered constitutional.

The analysis used by the Seventh Circuit in *John Doe v. Elmbrook School District* significantly alters existing principles in Establishment Clause analysis with respect to coercion. The Establishment Clause forbids the government's showing, in any way, support for, or a partiality to, any religion. Since its inception, it has protected the individual from the government's coercing him by governmental endorsement to join or participate actively or passively in the activity of any religion. The plaintiffs in this case claimed that they felt uncomfortable, upset, offended, unwelcome, and/or angry because of the religious setting.

With its holding, the Seventh Circuit has blurred the lines of what constitutes governmental coercion and religious endorsement in the

context of the Establishment Clause. In this case, the District never pushed for active participation of the ceremony attendees in any religious activities. However, the panel still found that the setting in conjunction with the personal emotional and psychological impact on the attendees was enough to pull into the realm of governmental coercion.

* * *

Joshua Barney *is an associate in Querrey & Harrow's Chicago office and concentrates his practice in general civil litigation, including products liability, insurance coverage, and bankruptcy and creditors' remedies. Mr. Barney received his law degree from DePaul University College of Law in 2011. During law school, he was a member of the Dean's List and was awarded the CALI Award in Evidence and in Advanced Legal Research. Mr. Barney also served on DePaul Business & Commercial Law Journal. Additionally, he served as President of the DePaul Business & Corporate Law Society, an organization that promotes social and academic interaction among DePaul Law students interested in the various aspects of business, corporate and financial law.*

Josh can be contacted via email at jbarney@querrey.com.

Peter E. Converse, David Lewin and Howard Rockman Join Querrey & Harrow as Of Counsel

Peter E. Converse has practiced transactional law in Chicago since 1983. His practice has focused for years on the general representation of privately-held companies and entrepreneurs. His clients include technology companies, other law firms, medical practices, companies involved in real estate development and management, and manufacturing companies.

David Lewin provides experience in insurance coverage, condominium law and construction law. He has handled construction matters across the nation, including road construction disputes in Florida and scaffolding cases in Washington.

David is an active member of the Illinois Association of Defense Trial Counsel and currently serves on the Legislative Committee. He received his J.D. from DePaul College of Law in 1992, and was awarded his bachelor's degree from Loyola University Chicago in 1989.

Howard Rockman is a patent attorney and intellectual property management consultant. He represents clients in litigation of patent, copyright, trademark and trade secret cases in federal and state courts, as well as clients seeking to secure domestic and foreign intellectual property rights before the U.S. Patent and Trademark Office, the U.S. Copyright Office, and similar intellectual property offices throughout the world.

Howard is a member of the American Bar Association, the Intellectual Property Law Association of Chicago, and the Institute of Electrical and Electronic Engineers (IEEE). He has a B.S. in mechanical engineering from Drexel University, and a J.D. with honors from The George Washington University Law School.

Municipal Law Update - Police Not Required to Watch Security Video of Brawl Before Deciding Who Started It

By: Jason Callicoat, Associate - Chicago, Illinois office

Police officers who responded to a brawl in a night club interviewed the participants, who gave conflicting accounts as to who started the fight. In the course of their interviews, the officers learned there was a security video of the event. Although this would presumably show who had actually started the brawl, the police chose not to watch the video. Instead, the officers chose to arrest two of the participants based on the conflicting verbal accounts of what happened. In the case of *Matthews v. City of East St. Louis*, 675 F.3d 703 (7th Cir. 2012), the Seventh Circuit Court of Appeals recently held there was no Constitutional requirement for the police to watch the security video before deciding whom to arrest.

The arrestees had sued the police officers for false arrest. These Plaintiffs, an R&B singer and his manager, had gone to the night club on the evening in question with their entourage. According to the Plaintiffs, they attempted to enter the club with their group, without paying the cover charge, because they had been invited there for promotional purposes. Plaintiffs claimed that a large security guard started yelling at them and demanding payment. They decided to pay, but before they could, the guard punched one of the Plaintiffs in the face. A melee ensued. At the end of the fight, employees of the club handcuffed the Plaintiffs, took them outside and called police.

Police spoke with Plaintiffs and with employees of the club. Plaintiffs stated they had been jumped by the security staff. The club employees claimed that one of the Plaintiffs had thrown the first punch. Police learned of the security video when speaking with club employees, but decided not to watch the video. Instead, they arrested Plaintiffs for assault and battery.

Plaintiffs sued the police officers for false arrest, asserting there was no probable cause to arrest them based on the statements of their opponents in the fight, when the security video would have showed what really happened. The United States District Court granted summary judgment for the Defendants on this issue, and the arrestees appealed.

RECENT CASE SUCCESS



Seventh Circuit Affirms Dismissal Of Political Retaliation Lawsuit

Shareholders **Brandon Lemley**, **Paul Rettberg** and associate **Jason Callicoat** scored a victory before the Seventh Circuit Court of Appeals on behalf of a municipality and its officials.

In *Benedix v. Village of Hanover Park, et al.*, the Village legislature eliminated three positions from the budget, including that of the plaintiff. At issue was whether the plaintiff could state a cause of action for political retaliation under the First Amendment when her boss was politically active but she was not.

The Seventh Circuit held that the District Court correctly dismissed the lawsuit, as a political association claim requires that the plaintiff engage in the protected activity as opposed to merely associating with a person who engaged in political activity. The Seventh Circuit also held that, even if plaintiff had been terminated for political reasons, political considerations were appropriate as she was the "Executive Coordinator" to a policy making employee.

The Seventh Circuit Appellate Court explained that probable cause is a determination made from assessing whether, based on the facts and circumstances at the time of the arrest, a reasonable officer would conclude that the suspect has committed or is committing a crime. The evidence needed for probable cause does not have to be enough to support a conviction or even enough to show that the officer's belief is more likely true than false. As long as a reasonably credible witness or victim informs the police that someone has committed a crime, the officers have probable cause. Once probable cause has been established, officers have no constitutional obligation to conduct further investigation as to whether there is exculpatory evidence.

The court acknowledged that a video is certainly an important piece of evidence, which in many cases can be conclusive. However, in this case, probable cause was established by the club employees who said one of the Plaintiffs threw the first punch. After hearing this statement, the court decided, officers did not need to investigate any further. While all reasonable avenues of investigation must be pursued, the club atmosphere that night was chaotic, and it was "not unreasonable" for the officers to choose not to watch the tape. The court stated that any other ruling "would put an undue burden on police to ascertain whether a videotape existed prior to making an arrest for an offense committed outside of their presence."

Although security camera footage has become more readily available, this case makes clear that police still enjoy a wide latitude of discretion when it comes to establishing probable cause. If they believe a witness' statement about what happened is sufficient, it is unlikely they will be second guessed by the courts, even when video evidence is available on the spot.

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***Jason Callicoat**, an associate in our Chicago office, concentrates his practice in municipal liability and construction law, defending municipalities in civil rights litigation and defending construction companies in injury cases and breach of contract litigation. He also handles mechanics liens and contract suits on behalf of construction companies that have not been paid for work they performed.*

Jason edits the environmental construction newsletter "Green Space Today," and is a regular contributor to the newsletter "Construction Law Quarterly." He has previous litigation experience in the areas of construction injury, insurance coverage, and workers' compensation.

Jason can be contacted via email at jcallicoat@querrey.com.

Q&H Shareholders Recognized at IDC Annual Meeting




Querrey & Harrow congratulates Shareholders **Paul Rettberg**, **Terrence Guolee**, **Bruce Schoumacher** and **Brandon Lemley** on recent honors, elections, and appointments bestowed by the Illinois Association of Defense Trial Counsel (IDC) at its annual meeting on June 8, 2012.

Paul Rettberg was presented a Meritorious Service Award in recognition of his service as Chair of the Municipal Law Committee for the past several years. Terrence Guolee was nominated and elected as a Board of Director-At Large. Brandon Lemley was appointed Vice Chair of the Municipal Law Committee and Bruce Schoumacher was appointed as Chair of the Commercial Law Committee.

Asset Protection for Physicians

By: Peter E. Converse, Of Counsel - Chicago, Illinois office

In these times, most physicians are concerned about the risk of losing some or all of their personal assets as a result of liabilities resulting from their professional activities. The risks of malpractice lawsuits are familiar to most physicians. Many have colleagues or friends who have "participated in the legal process" as defendants in malpractice actions, and have found the experience anxiety-producing at best.

Complex malpractice lawsuits may name dozens of physicians and medical practices as defendants. Physicians can be subject to financial calamity as a result of malpractice lawsuits, whether because professional liability policy limits have been exceeded, malpractice carriers have denied coverage, or other reasons.

In addition, physicians can be held personally liable for problems arising with Medicare and Medicaid, including claims for billing/coding problems or refusals to reimburse for unapproved procedures, which can result in attempts to recover chargebacks from physicians for multiple years of collections.

Unlike the owners of most other kinds of businesses, physicians operating their own practices cannot avoid many of the liabilities from their practices because of professional liability statutes and the various Medicare and Medicaid laws and regulations. Liabilities can also occur from physicians' personal life, unrelated to their professional activities. More than most other people, physicians have good reasons to utilize "asset protection' strategies to protect themselves as much as possible from such risks.

What is "Asset Protection?"

Asset protection is the use of various devices to prevent creditors from obtaining your assets through successful lawsuits, with such devices put in place before there is any hint of a potential problem. There are a substantial number of devices that attorneys who practice in this area can use to reduce the vulnerability of physicians (and others) to liabilities of all sorts, including those for malpractice lawsuits.

Should some kind of threatening problem occur, even having such a plan in place gives substantial advantages to the physician in any negotiations with a plaintiff and his or her attorneys. The specific design of a robust asset protection plan will depend upon the individual circumstances of the physician, and his or her preferences as to tradeoffs between levels of protection, cost and the extent to which they may surrender some control over their assets. In our experience, a physician who prepares ahead with an asset protection plan gets two benefits. First, in the event of a problem, the plan can greatly reduce the financial cost of that problem to the physician. Second, and perhaps equally important, even if no problem which threatens the well-being of the physician ever occurs, the physician immediately enjoys the peace of mind that this kind of plan can provide.

Len Rubin contributes "Media and Broadcasting" chapter to IICLE Election Law Handbook

E. Leonard Rubin, Of Counsel with Querrey & Harrow's Chicago office, was a recent contributor to the Illinois Institute for Continuing Legal Education (IICLE) most recent publication entitled *Election Law.* Mr. Rubin's chapter is entitled "*Media and Broadcasting*". For more information, please visit the IICLE website at http://www.iicle.com

Leonard Rubin Obtains Certified Mediator Status

Leonard Rubin recently was awarded a certificate from DePaul University College of Law and is now a Certified Mediator. In addition to his intellectual property practice, Len serves as a mediator in commercial, litigation and intellectual property disputes.

Plan Ahead! Don't Commit a Fraudulent Conveyance!

Physicians or others who don't plan ahead, and fail to put asset protection plans in place before they become aware of a potential creditor, may lose the ability to protect their assets. Courts take a dim view of attempts by defendants in lawsuits who attempt to frustrate their creditors by transferring assets to other individuals or entities after the lawsuit has been filed, or even if the defendant does so before the lawsuit is filed, but after the defendant has become aware of the circumstances which might create a future liability for them.

Both applicable state laws and the federal Bankruptcy Code create rights for such creditors to unwind such "fraudulent conveyances." In fact, debtors who end up in Bankruptcy Court are frequently prosecuted criminally for such fraudulent conveyances. So the physician who becomes aware of a potential professional liability or other possible unexpected debt, and has not completed an asset protection plan before making that discovery, has almost certainly waited too long, and will have blown the opportunity to protect assets for himself/herself and his or her family.

The Good News: Many Types of Assets Are Automatically Protected From Creditors

Although most people are not aware of it, many types of assets are automatically protected from creditors without any planning beforehand. For example, the assets in so-called "qualified plans," like pension and profit-sharing plans, IRAs and educational saving accounts, are protected from creditors in most circumstances. Similarly, life insurance policies (including cash values, if any, and eventual proceeds) are generally exempt from creditors as well.

Personal residences may also be protected if jointly owned by spouses in a special form of ownership, known in Illinois as "tenancy-by-the-entirety." If you own your primary personal residence with your spouse, and the attorney who represented you in purchasing that home specified this form of ownership in the deed, the home should be protected from creditors, although the proceeds from any eventual sale of the home may still be in jeopardy. Additionally, if you are the beneficiary of a trust, depending on the type of trust and the specific provisions contained within the trust agreement, your interest in the trust may also be protected from creditors without any action by you.

In addition, personal or family umbrella policies may provide some protection from liabilities without the necessity of further active planning.

The Bad News: Some Types of Assets Are Very Vulnerable to Creditors

Unfortunately, except for the types of assets described above, most other assets can be seized by a determined creditor. Bank accounts, securities accounts (outside of qualified plans), real estate, shares in privately-held corporations, ownership interests in private medical practices, and even jewelry and art, are all generally vulnerable to seizure by a creditor.

Creditors who are owed substantial sums of money can be very effective in locating such assets and satisfying their debts from them. Physicians may also be vulnerable to the loss of such assets from creditors unrelated to their professional activities. As just two examples, anyone who owns rental property or who has teenage children driving family-owned vehicles is certainly at risk for "jackpot liability," should something seriously unfortunate happen. Without being overly dramatic, physicians run the risk of losing substantially all of their assets, possibly after a life's work, should they experience simple bad luck in an extreme form.

So How Does Asset Protection Work?

An asset protection plan generally uses one or more devices to segregate an individual's assets from potential liabilities, or segregates some kinds of liabilities from vulnerable assets, or both. Assets are generally "segregated" by transferring them into some form of ownership which has some special attribute of protection.

As just one example, individuals who have

assets they know they will not need to support themselves in the future may transfer some of those assets into some kind of "irrevocable trust" to benefit members of their family. If such a transfer is completed before the occurrence of an event which might create a liability sufficient to threaten the assets in question, this kind of transfer is likely to survive the threat from a creditor.

On the other hand, a transfer made after a liability-threatening event occurs may later be unwound or reversed by a court, so putting the plan in place as early as possible is key. Asset protection devices are commonly put in place by planners in conjunction with implementation of an estate plan.

Designing the Asset Protection Plan

Designing an asset protection plan requires thorough understanding of the client's goals, liability risks, age, family circumstances, tax circumstances, assets, and willingness or unwillingness to surrender control of those assets. Some asset protection devices require giving up control of the assets to be protected, and others do not.

Plan design often involves balancing the goals of maximizing protection, optimizing likely tax consequences, maintaining control of assets, and minimizing complication and expense. Often, a very substantial degree of protection can be created for minimal expense without surrendering effective control of assets. A desired level of protection may be achieved without giving up too much control through a combination of two or more devices. Physicians may be aware of exotic (and expensive) asset protection devices like offshore trusts, but this level of complexity and expense is almost never required in a plan which is set up prior to the physician's awareness of any specific threat.

Once the asset protection plan has been designed, and the appropriate asset transfers completed, there is little else for the physician-client to do. The plan should be reviewed periodically (usually concurrently with the review of the individual's estate plan) to make adjustments required by changes in the law or the physician's personal circumstances, but otherwise the physician's primary remaining job is to enjoy a restful night's sleep.

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***Peter Converse**, Of Counsel to our Chicago office, has practiced transactional law in Chicago since 1983. Peter's clients include other law firms, technology companies, medical practices, companies involved in real estate development and management, and manufacturing companies.*

Peter can be contacted via email at pconverse@querrey.com.

Q&H WELCOMES THE RETURN OF ATTORNEY NICHOLAS JOHNSON

Querrey & Harrow is pleased to announce the return of **Nicholas Johnson**, who will practice in its Waukegan office. Mr. Johnson focuses his practice on litigation, construction law, and contract issues.

Mr. Johnson received his BA degree from the University of Wisconsin in 2000, and his JD degree, *magna cum laude*, from Thomas M. Cooley Law School in 2005. He is admitted to practice in both Illinois and Wisconsin, and is a member of the federal trial bar.

UPCOMING SEMINARS

"Two Sides of the Coin to Meet Today's Economic Challenges: Growing Through Acquisition vs. Exit Strategies for Your Business."
Elk Grove Village, Illinois - November 14, 2012

On November 14th, Querrey & Harrow will partner with representatives of Corbin, Duncan & Hubly, PC., The Private Bank, and The Peakstone Group to bring you a morning seminar entitled: "Two Sides of the Coin to Meet Today's Economic Challenges: Growing Through Acquisition vs. Exit Strategies for Your Business." Shareholder Bruce Schoumacher will moderate the seminar as you hear from:

- Mark Horita, Managing Director, The Peakstone Group
- Peter E. Converse, Querrey & Harrow, Ltd.
- Thomas J. Doherty, Managing Director, Business Banking, The Private Bank
- Ryan P. Giolitto, Tax Manager, Corbett, Duncan & Hubly, P.C.

Learn from our acclaimed speakers about required due diligence, tax outcomes, and financing options, as well as certain details to examine when considering acquisition or selling your business.

The seminar will be held on November 14th at Belvedere Banquets, 1170 W. Devon, Elk Grove Village. Come to network over breakfast at 7:30; the seminar will begin at 8:00 and end promptly at 9:30. To register early and reserve your place at this important event, please email akozy@querrey.com.

Everything a Construction Player Should Know About Insurance in Illinois
Chicago, Illinois - January 29, 2013

Querrey & Harrow attorneys, along with representatives from Assurance Agency and Risk Resources, Inc., will present a one-day seminar designed for project managers, engineers, attorneys, presidents, vice presidents, principals, owners, contractors, subcontractors, architects, insurance professionals, risk managers, accountants and property developers.

The seminar will cover topics such as:

- identifying risks
- insuring the work
- insuring against worker injuries
- minimizing financial risk
- insurance for damage to adjacent property
- drafting proper contractual insurance provisions

The seminar will be held at the University Center, 525 South State, Chicago, Illinois. To be notified when registration opens for this seminar, please email info@querrey.com.