// Duke Law Firm, P.C. - In the News
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Upcoming Conference

Denis Kleinfeld, Co-Chairman, invited Richard Duke to speak on the topic "Foreign Asset Protection Trusts: What, Why, When, How and Where" at the upcoming Florida Bar Annual Wealth Protection Conference—Creating a Successful Wealth Protection Practice, May 13, 2005, Miami, Florida (J.W. Marriott Hotel). The basis for the presentation will be Denis Kleinfeld's 110 page chapter on the foregoing topic.

For more information, see:
http://www.assetlaw.com/events.htm

Announcing:

On April 21, 2005, Debby Holmes, PP, PLS, was installed as President of BLSA, a Chapter of NALS, Inc., the association for legal professionals, for the 2005-2006 fiscal year. Debby has been active in BLSA since 1975. Congratulations Debby! For our "feature" article on Debby, please (see Vol. 1, Issue 5, September 2004 issue of the Duke Law Firm newsletter).

Thomas V. Cash

This month we feature Tom Cash, Executive Managing Director of the Business Intelligence and Investigations Division at Kroll Worldwide, the world's leading risk consulting company. He also works with the Security Services Group and specializes in international narcotics trafficking matters, as well as money laundering and fraud investigations throughout Latin America.
http://www.krollworldwide.com

Prior to joining Kroll, Mr. Cash held executive positions in the U.S. Justice Department's Drug Enforcement Administration (DEA) for over 25 years, and served as Special Agent in charge of DEA's Florida and Caribbean Division, the largest DEA office in the world.

During his career, Mr. Cash has overseen numerous kidnapping and ransom matters in Latin America, and has assisted corporations in the taking of precautions to prevent kidnapping and ransom matters through different strategies and training.

In addition, Mr. Cash crafted a sophisticated system for detection of money laundering for multiple Mexican and Dominican Banks that were later put to test when the U.S. government seized $7 million from these banks in a sting known as "Operation Casablanca." Additionally, Mr. Cash conducted all international aspects of the famous $65 million fraud/money laundering investigation known as "Unique Gems."

Due to his extensive experience in money laundering and fraud investigations, Mr. Cash has testified as an expert witness in Federal Courts and regularly briefed the Attorney General and senior officials of the Department of Justice, Department of Defense and the CIA on policy and enforcement issues involving criminal activities and trends in Florida, the Caribbean and Latin America.

In 1997 and 1998, he participated in the Oceana Money Laundering Conference and, in 2000, was honored by Who's Who in International Business in Miami and South Florida. Mr. Cash is a Board member of the Florida International Bankers Association (FIBA). He is currently serving as the Chairman of the Anti-Money Laundering Committee at Banco Popular Dominicano, the largest bank in the Dominican Republic, and is a member of the Royal Society of Fellows.
http://www.royalfellows.org/

Mr. Cash has completed a Masters Degree program in Public Administration from American University, and received his B.A. in English and Journalism from Georgia State University. He attended the Program for Senior Managers at the John F. Kennedy School of Government at Harvard University and graduated from the National Executive Institute of the FBI Academy.

A fluent German speaker, he has overseen complex investigative matters in Europe, the Middle East and Africa.

Thomas V. Cash
Executive Managing Director
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House Passes Bankruptcy Bill

The House passed the bankruptcy bill on April 14, 2005, and President Bush signed this bill into law on April 20, 2005. See the Duke

Law Firm newsletter, March 2005, for a discussion on the impact of this bankruptcy bill on asset protection trusts.
http://www.assetlaw.com/news.htm

High Court Rules IRAs Protected Under Bankruptcy
Monday, April 04, 2005
Associated Press
WASHINGTON — The Supreme Court gave bankrupt Americans another layer of financial protection Monday, ruling that creditors cannot seize their individual retirement accounts.

The unanimous decision shields a nest egg relied upon by millions of people. The justices said IRAs should join pensions, 401(k)s, Social Security and other benefits tied to age, illness or disability that are afforded protection under federal bankruptcy law.

Justice Clarence Thomas, writing for the court, said a bankrupt Arkansas couple was entitled to keep more than $55,000 in retirement savings from creditors. He reasoned that IRAs are benefits tied to a person's age under the federal statute because a tax penalty is imposed if a person makes withdrawals before age 60.

"That penalty erects a substantial barrier to early withdrawal," Thomas wrote. "Funds in a typical savings account, by contrast, can be withdrawn without age-based penalty."

The ruling affects 16 states and the District of Columbia, which do not have their own state laws protecting IRAs. The remaining 34 have separate state laws on bankruptcy protection, with a few of those, including New York, California and Iowa that have language mirroring the federal bankruptcy statute.

IRAs let most investors contribute up to $4,000 annually to a fund that grows tax-free until withdrawals. It is the retirement plan typically used by workers between jobs, according to AARP, the advocacy group for people over 50.

Unlike many other retirement plans, IRAs permit cash withdrawals for any reason at any time, but holders 59 1/2 and younger must pay a 10 percent penalty for doing so.

Some lower courts had ruled the fact that investors can make IRA withdrawals at any time made the retirement account more like savings accounts, which are unprotected from creditors under bankruptcy law.

According to lawyers for AARP, the 16 states principally affected by the ruling are: Alaska, Arkansas, Connecticut, Hawaii, Michigan, Minnesota, New Hampshire, New Jersey, New Mexico, Pennsylvania, Rhode Island, South Dakota, Texas, Vermont, Washington and Wisconsin.

The case is Rousey v. Jacoway, 03-1407.

What a Difference a Pond Makes (Revisited)
LAW.COM BLOG NETWORK
April 14, 2005
The following letter was written by a Legal Technology Columnist and discusses the extreme pressures of some lawyers to turn in required "billable hours."

> I do not know UK firms, but I worked in a New York law firm for two years. Virtually all billings were by the hour. A junior associate in NYC is expected to bill 60-70 hours a week. (That's BILLABLE time). The amount of waste, fraud and billing abuse (not mention misery of people who are paid obscene amounts of money to "review files" in return for sacrificing anything resembling a meaningful life) is, well, Dickensian.
>
> And I worked for a mid-size (40-lawyer) firm, which was considered a paradise compared to large Manhattan firms because we did not have to work holidays.
>
> Perhaps UK firms are more honest, and their billing methods more diverse, and the hours they work more human and humane. Perhaps people earn a little less in exchange for billing less and not having to work most weekends. Please factor that into your calculus of the revenue disparities between US and UK firms, which I assume are related to billing practices at some level.
>
> Please also note that the figures do not include anything relevant to client satisfaction. Are clients happier paying more, or less, for what I assume is comparable work?

The following report indicates that some law firms are "squeezing additional billable hours out of their attorneys."

Law Firms Gain, but With Big Caveat
Legal Times
With increasing revenues and profits, law firms are back—sort of. That's the finding of a confidential Citigroup Private Bank study of firm finances obtained by Legal Times. Seen by managers as one

of the most important barometers of the legal business, the latest study gave firms high marks for improving overall profitability and holding the line on expenses. The challenge lies in how firms achieved revenue growth: by hiking rates and squeezing additional billable hours out of their attorneys.

How Sarbanes Oxley is Changing Tax Services
In an article titled "How Sarbanes Oxley is changing tax services," INTERNATIONAL TAX REVIEW, the author discusses how tax directors in North America are dealing with the Sarbanes Oxley Act and why they are less than satisfied with the tax advice they receive.

The author points out that corporations are also looking at international law firms and tax bouquet law firms.

> Outside the big four professional services firms (Ernst & Young, PricewaterhouseCoopers, Deloitte and KPMG), only a small number of firms have the international scope and breadth of resources to provide the services that multinational corporate taxpayers demand. Mark Saks, General Electric's tax manager in Wisconsin, said that the problem was that there are now "too few firms that can provide quality services locally". This means that tax executives need to shop around and draw tax services from a combination of different firms, including international law firms and tax boutiques. This is evidenced in the flowering of transfer pricing and niche tax boutiques across the continent.

International Narcotics Control Strategy Report
The 2005 International Narcotics Control Strategy Report (INCSR) is an annual report by the Department of State to Congress prepared in accordance with the Foreign Assistance Act. It describes the efforts of key countries to attack all aspects of the international drug trade in Calendar Year 2004. Volume I covers drug and chemical control activities. Volume II covers money laundering and financial crimes.

In this 2005 INCSR, the U.S. State Department's Bureau for International Narcotics Law Enforcement Affairs stated that although a number of leading offshore financial service centers had made strides to fight money laundering, more needs to be done. This indicates the continuing pressure, right or wrong, from the U.S. on financial centers with respect to the implementation of anti-money laundering programs.

Cell Companies
It is common for a corporation to act as the holding company (parent) of one or more subsidiary corporations. This allows different types of businesses to be separated into subsidiary corporations. By separating the businesses, their liabilities are also separated. For example, one subsidiary corporation may be engaged in residential rental real estate, another in commercial rental real estate, and another in developing and selling real estate. If a lawsuit is filed against one of the subsidiary corporations, the other subsidiary corporations are not subject to that lawsuit and, hence, any potential liability.

It is also common for a limited liability company (LLC) to act as a holding company (parent) of one or more one-member subsidiary LLCs. The purpose is to separate the liabilities of one subsidiary from another subsidiary. For example, one subsidiary LLC may own real estate, another may own a vacation home, and another may hold personal investments. The lawsuit against one subsidiary LLC will not subject to other subsidiary LLCs to that lawsuit and any potential liability.

Several jurisdictions outside the U.S. have corporate laws allowing "cells" to be formed. This allows different businesses or different divisions to be placed in different cells within one corporation, as opposed to separate subsidiary corporations. A lawsuit against one cell does not subject another cell to that lawsuit or potential liability.

The states of Delaware, Iowa and Oklahoma allow the creation of separate protected "series" within one liability "container" (the series LLC). This avoids the necessity for one LLC to act as parent of several separate subsidiary LLCs. The separate protected series is the same concept as the separate protected cells, discussed above. Thus, a lawsuit against one series will not subject the other series to that lawsuit and any potential liability.

Each series must be treated separately and the formation documents filed to create the LLC must state that liability is limited to each separate series.

American Bar Association Task Force on Attorney-Client Privilege
Real Property, Probate and Trust Bulletin
April 20, 2005
On Friday, February 11, 2005, the ABA Task Force on Attorney-Client Privilege held public hearings in Salt Lake City to obtain comments and suggestions relating to the protection of communications between client and lawyer, as em-

bodied in the attorney-client privilege. The Task Force invited comments on the attorney-client privilege and its exceptions and sought specific examples regarding circumstances in which challenges to the privilege are being asserted by regulatory agencies and others. The Task Force is seeking recommendations as to how to strike the appropriate balance between the purposes of the privilege and competing objectives.

Leaky Shelters
Forbes
April 11, 2005
This article discusses Gary N. Kornman, a Dallas lawyer, insurance agent, estate planner and self-styled tax "educator." Mr. Kornman sold tax shelter arrangements with the purpose of avoiding capital gains taxes upon the sales of businesses by his clients. Without well-known names to protect, these early and small promoters simply shut down one tarnished business and moved on to another business. According to this article, Kornman's home was raided by the FBI, which suggests a criminal investigation. Kornman is the son of a Florence, Alabama jewelry store owner. Records in bankruptcy court state that his firm was earning more than $30 million in fees a year.

Also, the article states that some of the individuals who sold their businesses under this tax shelter arrangement for $20-$40 million are financially devastated. One Chicago attorney, now helping two Kornman clients negotiate with the IRS, stated this about Mr. Kornman: "His sales techniques were despicable. His contracts were despicable. He's refused to assist the taxpayers who have been involved in resolving their problems."

Treasury Wields Patriot Act Powers to Isolate Two Latvian Banks.
The U.S. Department of the Treasury on April 21, 2005 utilized USA PATRIOT Act powers to designate two Latvian financial institutions as "primary money laundering concerns." Multibanka and VEF Bank were named pursuant to Section 311 of the Act for money laundering activities and financial abuse by account holders and owners.

This Department of Treasury press release may be viewed at: http://www.treas.gov/press/releases/js2401.htm

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