

# Duke Law Firm, P.C. - In the News

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## Cayman Islands

The Cayman Islands insurance carrier, Bastion Life Insurance SPC Limited, was licensed on January 28, 2005, and is now issuing modified endowment and non-modified endowment (may borrow against) flexible premium variable universal life insurance policies insuring the lives of U.S. persons. Duke Law Firm spent two years preparing the Confidential Information Memorandum (CIM)--the private placement memorandum required under the 1933 Securities Act--and working with the actuary, Milliman, in preparing the provisions of the policies for Bastion.

*Owners of Bastion:* (1) Donald (Don) A.K. Neal from Australia (who resides in Grand Cayman) has extensive experience in international business matters, was, among other capacities, a manager for a major shipping line in Australia, branch manager for an international computer company, and was the Managing Director of the management consulting practice for Touche Ross (now Deloitte Touche) in Australia; and (2) AALL Group Inc. See the end of this newsletter for the background of AALL Group Inc.: <http://www.aall.com/>

*Reinsurer:* Munich Re Group. Munich Re is the largest reinsurer in the world.  
<http://www.munichre.com/>

*Licensed Insurance Manager:* Cayman National Insurance Managers Ltd. Michael S.A. Donnelly, the President of Cayman National Insurance Managers Ltd., is experienced in managing insurance carriers. He is the senior financial manager and Chartered Accountant with over 28 years of experience in medium to large corporations, covering financial

management, treasury, investment accounting, corporate planning, and Management Information Systems.

<http://www.caymannational.com/>

*Directors:* Don Neal (Managing Director); M. Erik Monsen (Director), President, AALL Group Inc.; and Allan Brooks (Director), Insurance Partner of KPMG, 1984-1999, Consultant KPMG, 2001-2003.

*Secretary of the Corporation:* Ian Philips, President, International Financial Services, Cayman National Corporation.

*Primary Investment Manager:* Cayman National Securities Ltd.

*Premium Custodian:* Cayman National Trust Co. Ltd.

*Bank:* Cayman National Bank Ltd.

*Auditor:* KPMG (Cayman Islands).

*Actuaries:* Milliman. Dan Theodore, Milliman (New York offices), is experienced in actuarial work for offshore insurance carriers that issue U.S. compliant variable life insurance policies:  
<http://www.milliman.com/>

*Attorney:* The Ruchelman Law Firm, a cross-border international tax law firm.  
<http://www.ruchelaw.com/>

*Specialist Advisor:* Duke Law Firm, P.C., will work with the owners and manager in the issuance of each variable life insurance policy, ensuring that all structures are in compliance with various laws, including U.S. tax laws and the Regulation S and Regulation D exemptions to the 1933 Securities Act.

## Cook Islands

Cook Islands was removed from the list of countries the Financial Action Task Force (FATF) deemed to have inadequate anti-money laundering laws. Removal was made possible by a concerted program of upgrading legislation, governmental oversight, and supervision by the Cook Islands government, with the assistance of international agencies. The Cook Islands now has a legislative, regulatory, and oversight structure more advanced than some OECD countries.

Removal may take some time to filter down from the FATF to particular regulatory and oversight authorities in the United States and elsewhere. The Department of the Treasury for example, must adopt the FATF action before its agencies and offices, such as the Financial Crimes Enforcement Network, and the Office of the Comptroller of the Currency, which administers and exercises oversight over the federal banking system, acknowledge the change.

Confirmation of removal is found at the FATF web site at:

<http://www.fatf-gafi.org/dataoecd/51/2/34423127.pdf>

## Nevis

Congratulations to Ms. Jackie Hunkins, attorney, who was appointed as Acting Director of Nevis International Financial Services:  
<http://www.nevisfinance.com/services.cfm>

## Julie Addison

Duke Law Firm introduces Julie Addison, International Legal Assistant, who celebrates seven years with Duke Law Firm this month. Julie came to Duke Law Firm from

Orlando, Florida, where she worked for an estate planning firm.

Julie works in the areas of international asset protection and estate planning, including: document preparation; due diligence; working with foreign trustees, trust protectors, financial institutions and service providers to facilitate planning implementation; Web site design and maintenance; preparation of marketing materials; and working with clients and prospective clients in providing assistance to attorneys in determining the needs of the clients.



Thanks to technology, Julie was able to remain with Duke Law Firm when a transfer relocated her family to Denver, Colorado, three years ago. With the help of computer technicians, Julie is able to "telecommute" and continues to work for Duke Law Firm from her home office in Denver.

Julie has been married to her husband, Todd, for fifteen years and they have two children: Kyle-age 13, and Austin- age 10.

#### Recommended Reading

We recommend two recent books written by Jim Rogers: *Adventure Capitalist—the Ultimate Investor's Road Trip*, regarding Jim Rogers' trip around the world in an automobile; and *Hot Commodities - How Anyone Can Invest Profitably in the World's Best Market*. His first book was *Investment Biker—Around the World with Jim Rogers*.

Jim Rogers is well known in the investment world due to: (1) the selling of his partnership interests in the Quantum Fund (George Soros); (2) his traveling around the world on a BMW motorcycle; (3) his traveling around the world in a Mercedes automobile (custom designed); (4) his appearing (Saturday mornings and Saturday afternoons) on Fox (cable) News: Cavuto on Business; and (5) his many speaking engagements.

Richard met Mr. Rogers at several speaking engagements and in the summer of 2002, while Mr. Rogers was speaking in Birmingham, Richard had the pleasure of Mr. Rogers' company during parts of two days and at dinner. Richard highly recommends that you read the latest two books by Mr. Rogers.

For more information about Jim Rogers, his books and his current speaking engagements, go to: <http://jimrogers.com>

#### Upcoming Conference

J. Richard Duke will be a guest speaker at the upcoming 2nd Annual International Trust, Tax Planning & Compliance Forum, March 17-18, 2005, Miami, Florida (JW Marriott). For more information, see:

<http://www.assetlaw.com/events.htm>

Richard will speak on the topic: "Structuring non-grantor trusts."

Congratulations to Irela Camero for her position as Executive Assistant to Professor William Byrnes at the Walter H. & Dorothy B. Diamond Graduate International Tax Program, St. Thomas University (Miami, Florida). As a professor in the LL.M. in International Taxation program, Richard has

worked with Irela for years. Irela worked in this program as a student at St. Thomas University before being appointed as Executive Assistant.

The Web site for The Royal Society of Fellows (RSOF) has been updated:

<http://www.royalfellows.org>

The RSOF is planning a conference for 2005 and an upcoming issue of this newsletter will provide information about the conference. RSOF conferences have two tracks: 1—compliance, due diligence, know your customer (that includes USA Patriot Act, the Bank Secrecy Act, the Financial Action Task Force, asset seizures and other areas); 2—offshore and international asset protection, tax and estate planning (offshore and other areas).

#### Panamanian Foundations

Panamanian and Liechtenstein foundations are vehicles becoming popular for Americans in their planning. A foreign foundation that includes a U.S. person as the founder or one in which a U.S. person transfers assets, directly or indirectly, to the foundation must be classified for U.S. tax purposes. For legal purposes, the U.S. recognizes the foundation in accordance with the governing law. Based on the tax classification of a foreign foundation as either a foreign corporation or a foreign trust, appropriate tax returns must be filed.

A foreign foundation that is classified as a foreign corporation for income tax purposes is subject to the following: (1) Form SS-4 (obtaining Federal Tax Identification Number) must be filed; (2) Form 926 may be due with respect to the transfer of assets or cash to the foundation; (3) Form 5471 must be filed with respect to the

operations of the foreign corporation (five categories of filers are stated in the instructions to Form 5471) and shares of stock are deemed to have been distributed to the founder; (4) because a U.S. person owns more than 50% of the foreign corporation, it is classified as a controlled foreign corporation and its passive investment income is further classified as subpart F income (shares of stock are deemed to have been distributed); (5) all subpart F income is subject to ordinary income rates and capital gains are not available; (6) all income and gains must be reported as ordinary income (in other words, no capital gains are available); (7) in the event of investments in the U.S., most of those investments will be subject to a 30% withholding requirement followed by a second tax to the founder due to the foundation's classification as a controlled foreign corporation with subpart F income; (8) subpart F income for each taxable year must be reported as of December 31, irrespective of whether the income is distributed; and (9) the basis of the deemed shares of stock in the foundation does not step up to the value at the date of death (for example, if \$500,000 is transferred to the foundation, and at death the value of those assets is \$1 million, the basis of the founder's interest remains at \$500,000, and sale of the deemed shares by the heirs will be subject to ordinary income tax on the \$500,000 gain).

A foundation that is classified as a foreign trust for income tax purposes requires the filing of the following tax returns: Forms 3520, 3520-A, 1041, 709 (gift tax return), SS-4, and TD F 90-22.1. A foun-

ation that is classified as a foreign trust for tax purposes is transparent, meaning that all income, gains and losses, whether distributed or not, are reported by the founder in accordance with U.S. law. Thus, the capital gains rules and reduced rates apply.

#### **Background information regarding AALL Group Inc. and Cayman National Corporation**

The origins of the AALL group date back one hundred years to when AALL was established in Japan in 1904 as a trading and marine services company. AALL developed into one of the larger trading, ship broking and shipping agency firms in the Far East.

In 1972 AALL Group Inc. was formed in the Cayman Islands as the Group holding company. It established a number of financial services subsidiaries in the Cayman Islands, including AALL Trust & Banking Corporation (AT&B) and AALL Asset Management (AAM). AT&B was established in 1980 as a fully licensed private bank offering specialist services to high net worth individuals and corporate clients. AAM was established to provide asset management services to private investors, institutions and independent asset managers. AALL Group Inc. has access to all major international markets and has preferential arrangements with many of the world's largest investment houses and top money managers.

AALL & Co. Ltd in Japan remains one of the leading providers of marine services in Japan and is involved in shipping, shipping related investments, real estate, private placements, and other in-

vestments. It has offices in Tokyo, Kobe, Imabari, and Yokohama. The company recently moved to new headquarters in Tokyo.

In late 2004, AALL Group Inc. concluded an arrangement with Cayman National Corporation effective December 31, 2004 where Cayman National Corporation acquired AT&B and AAM's banking, trust, and asset management businesses. As the result of the merging of these businesses, AALL Group Inc. has become a significant shareholder in Cayman National Corporation and the Chairman of AALL Group Inc has joined the boards of Cayman National Trust Co. and Cayman National Securities Ltd. AALL Group Inc. continues in its other Cayman based activities and is working with Cayman National Corporation in developing its international Private Banking business.

Cayman National Corporation is an independent comprehensive financial institution with headquarters in Grand Cayman. Cayman National is the largest Cayman Islands based financial services company, with assets of over \$900,000,000 and more than 300 employees. In 2004, it celebrated its 30-year anniversary in the Cayman Islands.

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