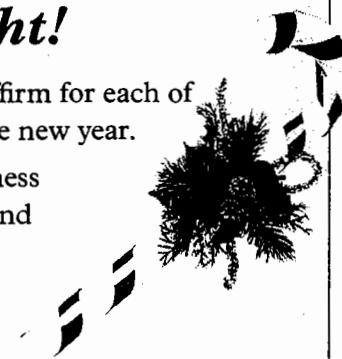


## *May Your Days Be Merry and Bright!*

As the year draws to a close, all of us at Williams & McCarthy welcome this chance to reaffirm for each of you our best wishes for peace and happiness during this holiday season and throughout the new year.

We are grateful for the confidence of all those who have entrusted their personal and business legal matters to us and resolve in 2006, and in the years which follow, to continue to respond promptly and professionally to the needs of our clients and of the communities we serve.

From everyone at Williams & McCarthy — our warmest greetings of the season and our very best wishes for the years to come.



## *Charitable Giving: Katrina Emergency Tax Relief Act*

By Scott C. Sullivan

In September 2005, the Katrina Emergency Tax Relief Act (“the Act”) was signed into law. The Act provides tax relief to those individuals and businesses reeling from the devastation of Hurricane Katrina. It also provides tax relief to the many relief workers and generous contributors who have provided aid to our hard hit neighbors in the Gulf region.

Generally, for individuals, contributions to tax-exempt charitable organizations are limited to 50 percent of the taxpayer’s adjusted gross income. The Act temporarily increases the maximum deduction to 100 percent of the donor’s adjusted gross income for the period August 28, 2005 to December 31, 2005. The maximum deduction for qualified contributions by corporations is also increased temporarily from 10 percent of taxable income to 100 percent. To the extent a taxpayer’s qualified contributions exceed the 100%

limitation, the deduction can be carried forward for up to five years.

Other features of the Act include:

A taxpayer who uses a vehicle to provide relief related to Hurricane Katrina through December 31, 2006, may tax an itemized deduction using 70% of the IRS business mileage rate in effect on the date of use, rather than the IRS charitable mileage rate of 14 cents per mile.

Any taxpayer can take an enhanced deduction for donations of books to a primary or secondary school so long as the books are suitable for and used as part of the donee’s educational programs.

For 2005 and 2006, a taxpayer may take an additional personal exemption of \$500.00 per displaced person who receives shelter from the taxpayer. The maximum additional deduction is \$2,000.

## *Taxpayers Lose In Important Family Limited Partnership Cases*

By Michael T. Cyrs

Individuals sometimes transfer assets to a family limited partnership (FLP) in hope of achieving large estate tax discounts for the assets that would not otherwise be available if the assets were retained in out-right ownership. The large discounts, in turn, can result in substantial estate tax savings. However, in order to

achieve the desired result, the individual must give up control of the transferred assets or the property will be brought back into the estate under complex treasury regulations. That’s exactly what happened in a very important case decided this past summer in the IRS’s favor. *Strangi v. Commissioner* (July 15, 2005). In the *Strangi* case, the Court found that there was an “implied

*Continued on page 2*

## **Family Limited Partnership Cases ...** *Continued from page 1*

agreement” between Mr. Strangi, the decedent, and his relatives, for Mr. Strangi to retain possession of the property even after he transferred it to the FLP.

The *Strangi* holding is also consistent with two other decisions this past year, *Estate of Korby* and *Estate of Abraham*, in which large estate tax discounts in the FLP context were denied. Each of the recent decisions underlines the need to respect the strict formalities of

the FLP structure, as well as the business purpose of the proposed arrangement, if estate tax discounts are to be realized. If you are considering implementing a FLP, or have already done so and desire to review your arrangement in light of the recent decisions, we would welcome the opportunity to meet with you and review your estate plan and current estate tax exposure.

## **Workplace Harassment by Non-Employees**

*By Stephen E. Balogh*

A female account representative complains to you that a male, who is also the president of your biggest client and her biggest account, is making unwanted advances. An Arab worker complains that his coworkers are shunning him and writing graffiti about him in the bathroom because he complained about his popular supervisor who called him a “towel head.”

Do you, as the employer in these situations, have an obligation to do anything about harassment by coworkers or by non-employees? The answer is almost certainly, yes. The U.S. Supreme Court in *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 118 S.Ct. 2257, 2270 (1998), said that an employer would be liable for coworker harassment unless the employer could affirmatively show that it took reasonable measures intended to stop the behavior. Recently, a federal district court within the jurisdiction of the U.S. Court of Appeals for the Seventh Circuit (which includes Illinois, Wisconsin and Indiana), made clear that the rationale of *Ellerth* will be extended to harassment by non-employees such as contractors, vendors and clients.

*Erickson v. Wisconsin Department of Corrections*, 358 F.Supp.2d 709, 725-728 (W.D.Wisc. 2005).

The district court in *Erickson*, reviewed earlier Seventh Circuit decisions, decisions from other federal Courts of Appeal and Equal Employment Opportunity Commission regulations and concluded that the same standard that applies to employer liability for coworker harassment should apply to a hostile work environment created by a non-employee. Specifically, if the employer is in a position with the non-employee where it “knows or should have known” of the offending behavior and fails to take immediate and appropriate corrective action, it may be liable. This is a traditional negligence standard.

Returning to the scenarios above, the employer should at least contact the client and ask that the behavior stop. If the client continues the unwanted behavior and is contacting the account representative at work, further remedial action will be warranted. The employer with the Arab employee should minimally affirmatively remind all of its employees that the supervisor’s behavior was wrong and that retaliation will not be tolerated.

## **Dangers Lurking in E-Mail**

*By Brendan A. Maher*

One of your employees is sitting in an office cubicle when she is overcome by wit. So she fires off a quickly composed e-mail to an appreciative colleague. Though it happens hundreds, if not thousands of times each day, such spur-of-the moment missives can come back to haunt you and your company. Just ask the folks at Enron, Arthur Anderson and FEMA.

Because e-mail lives on in cyberspace, a message sent today can reappear to create headaches, and

perhaps legal liability, tomorrow. Employees at private companies can get themselves fired or arrested and can get their employers sued. E-mails sent by government employees are generally part of the public record and can be embarrassing at best and scandalous at worst. Either way, when e-mail bites back, the sender will not be “LOL” (e-mail shorthand for “laughing out loud”).

Office e-mail has become such fertile ground for lawyers in search of smoking guns that entire companies have formed for the purpose of investigating and

*Continued on page 3*

digging dirt out of company hard drives. Simply put, e-mail can be the best source of evidence in civil or criminal litigation. Due to that fact, many lawyers are advising their clients not to use e-mail to communicate about sensitive matters and, more importantly, not to include anything in an e-mail message that would not look good if “blown up” to a poster-sized exhibit and read to a judge or jury. Like other written documents, e-mail is fair game for a subpoena or a search warrant. These days, it can and will be sought and recovered if your company is sued.

Recent news provides many examples of the dangers lurking in e-mail. Retrieved messages were used by federal prosecutors to gain convictions in the Martha Stewart and Enron cases. It brought down some of Arthur Andersen’s accountants. Former FEMA director Michael Brown was publicly humiliated by the disclosure of multiple e-mail messages in which he made insensitive remarks regarding his responsibilities in connection with the Hurricane Katrina disaster.

Even relatively innocent office banter can create problems. For example, Chevron settled a lawsuit for \$2.2 million that involved an interoffice e-mail giving 25 reasons why beer is better than women.

So, what should you do to avoid or minimize these potential pitfalls? If you don’t want your employees to use your e-mail system to send porn, chain letters, or company secrets, a written policy is the best way to let them know. The policy should contain a basic statement of who is allowed to use the system and for what purposes. It should also spell out your company’s policy on what is and is not appropriate, whether employee e-mail is monitored, whether and to what extent personal use is allowed and how e-mail is to be stored, managed and/or deleted. The policy should spell out the potential consequences to employees to who violate it, and all employees should be required to acknowledge having received and reviewed the policy. Finally, employees should be reminded of the policy on a regular basis, perhaps even via e-mail.

## ***IRS Provides Relief From the FSA “Use-it-or-lose-it” Rule***

*By John E. Pfau*

Employers can now give employees up to 2-1/2 months of additional time to spend unused money in their flexible spending accounts (FSAs), provided they amend their cafeteria plan documents *prior* to the end of the current plan year. The additional time can be made available for both health FSAs and dependent care reimbursement accounts (DCAP), but does not change the character of the funds in an FSA (i.e., dependent care expenses cannot be reimbursed from a health FSA and vice versa).

The IRS recently made available limited relief to the “use-it-or-lose-it” rule. The law now permits (but does not require) employers to amend their plans to add a grace period of up to 2-1/2 months. In other words, FSA participants can have up to a total of 14 months and 15 days (the 12 months in the plan year plus the grace period) to use the benefits or contributions for the plan year before those amounts are forfeited under the “use-it-or-lose-it” rule.

Four conditions must be met in order for a cafeteria plan to be operated with a grace period pursuant to the new law:

- First, the employer must amend the plan to incorporate the rule – *before the end of the current plan year.*
- Second, the grace period must apply to all cafeteria plan participants.
- Third, the grace period must not extend later than the 15th day of the third month following the end of the plan year. (March 15th for calendar year plans.)
- Fourth, the plan must not permit cash-out or conversion of unused benefits or contributions during the grace period to any other taxable or nontaxable benefit.

Unused benefits or contributions in a health FSA cannot be used for expenditures under a DCAP, or vice versa. Unspent amounts at the end of the grace period must be forfeited and cannot be carried forward to the new plan year.

If you maintain a flexible spending account plan (a/k/a “cafeteria plan” or “Section 125 plan”) and are interested in providing this new benefit to your plan participants, contact John Pfau at (815) 987-8922 immediately.

## Williams & McCarthy in the News



Michael T. Cyr, a partner in the Law office of Williams & McCarthy, has been named by the national publication of Worth Magazine, as one of the nation's top 100 attorneys in the area of trusts and estate planning.

Worth Magazine compiled the list of the nation's most prominent attorneys for its December issue based on educational credentials, professional affiliations, publishing history and client

references. According to Worth, the editorial staff vetted the nominations of financial advisors, family office executives, accountants, and consultants, to find attorneys who combine exceptional legal expertise with outstanding interpersonal skills and great tact.

Cyr, who also maintains certification as a Certified Financial Planner, has also been named for the second consecutive year as a Leading Lawyer in the state of Illinois in the trusts and estate area, a designation awarded by being selected by fellow lawyers as one of the top lawyers in the state in a given field.



Scott C. Sullivan was recently elected a trustee of the Smith Charitable Foundation. The Foundation, which has been in existence since 1956, annually provides grants to charitable organizations located in the greater Rockford region. The other

Foundation trustees are: Dana Vincent, Tyler Smith and S. Kinnie Smith.

Mr. Sullivan is partner of the Firm and concentrates his practice in the areas of corporate law and commercial litigation. He also serves on the boards of several area not-for-profit organizations, as well as a publically traded bank holding company and the alumni board of the Notre Dame Law School. He has also been recognized as a Leading Lawyer in the State of Illinois in the areas of commercial litigation and corporate law.

Recommended By Peers For



### Partners Named Leading Lawyers in Illinois

The Leading Lawyers Network has designated fourteen partners of Williams & McCarthy as leading Illinois lawyers for

2005, more than any other firm in the Rockford area. The Leading Lawyers Network is a division of Law Bulletin Publishing Company, which conducts annual

peer surveys to determine the top 5 percent of attorneys in Illinois based upon reputation and experience. The fields of experience within which our partners were recognized include trusts & estates, labor and employment law, corporate and real estate law, commercial litigation, insurance law, workers compensation defense, employee benefits and health care law.

*This Newsletter is published as a service to clients and friends of Williams & McCarthy. Its contents are necessarily general and limited; no specific action should be taken without seeking legal advice.*

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