

YEAR-END ALERT

The following are selected items that we would like to call to your attention:

- **Annual exclusion gifts.** You can make gifts of up to \$10,000 to an unlimited number of persons, each year, without incurring any gift tax (married persons can “split” gifts for a \$20,000 exclusion). If you are considering making annual exclusion gifts, they should be made prior to the end of the year in order not to waste the 1999 \$10,000 exclusion.

If you are a New York resident and are considering a gift of more than \$10,000 to one person, it may be advisable to wait until next year, when the New York gift tax will be repealed.

- **Charitable contributions.** Consider making year-end charitable contributions. Generally, if you contribute appreciated property, such as securities, you will not be taxed on the built-in gain and will be entitled to a deduction for the full fair market value of the property. Contributions that are made by check will be deductible in 1999 provided the check is mailed prior to the end of the year.
- **Establish a qualified plan before the end of the year.** While an IRA for 1999 may be established up to the time that your income tax return is due (including extensions), this is not the case for a traditional benefit plan, such as a pension, profit-sharing, Keogh plan, etc. Such a plan must actually be established before the end of the year if a contribution is to be made for 1999.
- **Review liability policies for “wrongful acts” coverage.** Several clients have come to us this year after discovering that their general liability insurance policies do not cover intentional wrongful acts of an employee. An Appellate Division case in the Fourth Dept. of New York held, 3-2, that Aetna Commercial Insurance Co. and Aetna Casualty had no duty to defend an employer because the assault and sexual abuse committed by its employee was not considered an “occurrence” under the policies. This is so, even though the employer was sued on a theory of negligent hiring and negligent security. The First Department in the Camp Raleigh case and the Second Department in the Jackson Avenue case also came to similar conclusions.

The Fourth Department case (Sweet Home Central School District vs. Aetna) is now being appealed to the New York Court of Appeals. Our firm has been retained by The Real Estate Board of New York, Associated Builders & Owners, CHIP and Westchester Builders Institute to file an amicus curiae brief. We have petitioned the Court and submitted our proposed brief advocating the position of the employer that the ordinary, everyday meaning of “occurrence” (which is defined by reference to “accident”) would include bodily injury resulting from an intentional act, neither expected nor intended from the point of view of the insured. By reason thereof, the insured employer in Sweet Home should have been entitled to be defended and indemnified by its commercial general liability carrier.

The brief was prepared by our litigation partner, Douglas Gross, with assistance from Gerald Morganstern, Carol Hauge and Michael Rasnick. If you would like a copy of the brief please contact us or visit the “Newsletters” section of our website, located at <http://www.hgg.com/newsletters.htm>

In the meantime we suggest that you examine your insurance policies carefully because
standard commercial

general liability policies, as interpreted by the lower courts, may not provide coverage for intentional wrongful acts of employees.

- **Review your Will and other estate planning documents.** How long has it been since you executed your Will? The law might have changed in the interim, or your family or financial situation may have changed since that time. In any such case, your present Will could be seriously out of date. You should also review your health care proxies (“Living Wills”), powers of attorney, etc., to make sure that they reflect your current wishes.
- **Review your benefit plan elections and distribution options.** You may be required to take a distribution from your pension, profit-sharing or IRA plan if you have reached age 70-1/2. Failure to do so could subject you to penalties. In addition, there are certain benefit elections that *must* be made no later than the April 1st of the calendar year following the year in which you attain age 70-1/2; if you do not do so, the IRS will make them for you (which is usually to your disadvantage).

If you have questions about any of these items, please call an attorney at the firm.

We anticipate that our office will be closed on December 31, 1999.

To all of our clients and friends - Happy New Year!

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