The July 18th Thursday Report

Re: The Picnic with a Chance of Rain Report

National Barbeque Day was celebrated on July 13th and National Hot Dog Day was July 17th. Thus, this Thursday report is dedicated to BBQ and Hot Dogs. We are truly in the (hot) Dog Days of Summer now. We hope this report will leave you grilled with happiness.

Edited by: Ken Crotty

Hot off the grill for this Issue:

- **Quotes**
- ***In Re Rensin: How One Man's "Hippo"cracy Might Change Offshore Trust Planning*** by Alan Gassman and Wesley Dickson

This article discusses the recent bankruptcy case, *In Re Rensin*, decided May 3, 2019, by the U.S. Bankruptcy Court for the Southern District of Florida. This case involved fraud, a $14 million dollar judgment, and money scattered across three islands. Beyond the intriguing facts, the holding in this case could have major implications regarding the effectiveness of off shore trusts.

- ***The $1,500,000 Letter*** by Alan Gassman, Phil McLeod, and Joe Cuffel

This article looks at a recently decided case in the Second District of Florida, *Famiglio v. Famiglio*, involving a Prenuptial Agreement whose interpretation boiled down to one question: can the use of the word "a" in a specific provision of the Prenuptial Agreement be construed to mean "the" or is it more akin to the word "any"? The answer to this question could make for an extremely expensive indefinite article: a little "a" with a big price tag.

- ***Do Not Use Your Cell Phone While Driving in a Work or School Zone*** by Maxwell Potter

People driving in Florida need to be aware that House Bill 107 made changes to Florida's law related to texting while driving and to the use of cell phones in certain areas. Later this year, drivers will no longer be able to use handheld wireless communication devices in work zones, school zones, and school crossing areas as described in more detail below.

- ***Recent Developments in S Corporation Ownership Stock*** by Steve Gorin

Steve Gorin provides an excellent explanation of how changes in the tax law allow nonresident aliens to receive ownership interests in S corporations, a review of the evolving rules related to the use of shareholder redemption agreements, and the impact of deferring income tax by making a Section 83(i) Election.

- **Forbes Corner** (Links)

Tax Alert For IRA And Pension Account Holders by Alan Gassman

The SECURE and RESA Acts could impact IRA and Pension Account Holders. This article discusses some of the changes that could occur as a result of these pieces of legislation and provides insight into some important estate planning considerations.

Link: https://www.forbes.com/sites/alangassman/2019/06/19/tax-alert-for-ira-and-pension-account-holders/#3333cfbf30f2

- **For Finkel's Followers**
- **Thoughtful Corner**
- **Humor**
- **Upcoming events**

Quotes of the Week

Nelson Mandela, born on this day in 1918, said: "It always seems impossible until it's done." (A feeling we can relate to after every Thursday Report).

Also born on July 18th, Vin Diesel (known for his Academy Award winning role in The Pacifier) said: "It doesn't matter whether you win by an inch or a mile, winning is winning."

In this year's Fourth of July Hot Dog eating contest, Joey Chestnut won the competition by eating 20.9 hotdogs more than the nearest competitor. 20.9 hot dogs is roughly 125.4 inches. According to Vin Diesel, that could theoretically count as 125 victories. Diesel doesn't comment as to whether .4 inches would constitute a victory, but that would be a valid presumption if one were to extrapolate from his above quote.

America successfully completed the first manned mission to the Moon between July 16th and July 24th, 1969. Of course, on that trip, Neil Armstrong famously said, "That [Thursday Report is] one small step for a man, one giant leap for mankind."

Alan's father worked for NASA from 1967 until 1983 and had many charts on the Apollo Program.

In Re Rensin: How One Man's "Hippo"cracy Might Change Offshore Trust Planning Forever

By: Alan Gassman and Wesley Dickson

EXECUTIVE SUMMARY:

Summarized below is a story involving fraud, money scattered across three islands, and a $14 million dollar judgment.[1] While these things sound like the plot elements of a best-selling thriller novel, they are actually the facts of a recent bankruptcy case.

[1] *In re Rensin*, 17-11834-EPK, 2019 WL 2004000 (Bankr. S.D. Fla. May 6, 2019).

This Miami, Florida Bankruptcy Court case of *In Re Rensin*, decided in May of 2019, involves a hardcore and deceptive debtor with a very unpopular track record, and some degree of judicial legislation (though critics believe the opinion in this case to be Hippowash). This is in reference to Joseph K. Rensin's now defunct company "BlueHippo," which is further discussed below. Hippos, despite bearing a resemblance to pigs, are most closely related to whales and dolphins. Like pigs, however, hippos are generally used by humans to denote negative qualities.[2]

The trust was old and cold, but what caused the judge to be so bold? Mr. Rensin discovered that not all that glitters turns out to be gold.

The facts of the case are fascinating, as is the judge's decision on summary judgment motion, which will likely be appealed to the Federal District Court, and then possibly to the 11th Circuit.

FACTS:

Mr. Rensin sold a business in 2001 for approximately $9,000,000 and placed the proceeds with SouthPac Trust Company in the Cook Islands.[3] Rensin formed an irrevocable trust of which he was the beneficiary.

He subsequently started a business called BlueHippo Funding, which apparently was intended solely to defraud people who had bad credit. The company promised that if those individuals with bad credit sent $100 initially, and then made subsequent lay away payments, they would qualify for full financing of a computer. This, of course, was a ploy and over the many years that the company was in business only 1 computer ever got delivered.[4]

The BlueHippo website, in 2008, offered to "provide an effective alternative [to purchasing computers] for people with limited financing options due to less than perfect credit or no credit at all."[5] They called themselves "the nation's leading direct response merchandise lender," and claimed to specialize in providing computers and televisions. This Hungry Hungry Hippo kept taking peoples' hard-earned cash, with total intake around $15 million.

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[2]These animals have nothing to do with HIPA, a privacy law. Mr. Rensin, on a similar note, forfeited his privacy after declaring bankruptcy.

[3] *In re Rensin*, 17-11834-EPK, 2019 WL 2004000 (Bankr. S.D. Fla. May 6, 2019).

[4] https://www.ftc.gov/news-events/press-releases/2009/11/ftc-lodges-contempt-charge-against-bluehippo

[5] https://web.archive.org/web/20071214065418/http://www.bluehippo.com/aboutUs.asp

After stealing the money of all these victims, the Federal Trade Commission (FTC) received a $13,400,627.60 judgment against BlueHippo Funding and Mr. Rensin, personally. Between the initial filing of the complaint by the FTC in 2008 and the handing down of the near $14,000,000 judgment there was intense litigation, bankruptcies filed, and a number of financial and property transfers and purchases which are beyond the purview of this discussion.

Despite facing litigation both through BlueHippo and individually, Mr. Rensin showed his hippo-headedness. In a last ditch effort to save himself, he transferred the trusteeship of the trust from the Cook Islands to Orion Trust Company in Belize. For many years, Belize has been considered an incredibly debtor-friendly country. The Orion Trust Company is affiliated with the law firm of Arguelles & Company, LLC[6], and is considered to be a reputable trust company in Belize. The website for Orion Trust Company shows 12 employees, including a banker of 30 years, with experience at Barclays' branches in Belize and the Cayman Islands.

There is no allegation that any of the "Hippo money" was transferred to the Trust, although Mr. Rensin transferred $350,000 to his lawyer towards the end of 2015, and apparently instructed the lawyer to transfer these funds to the Belize trustee. The Trust also paid Mr. Rensin around $8.6 million in distributions during the course of the lengthy litigation. This money was used, supposedly, to pay legal fees and payback creditors.[7]

While we do not know all of the transactions that occurred with respect to the Trust, we do know that it transferred approximately $15,000 to Mr. Rensin per month.[8] Additional funds were used by Mr. Rensin to purchase a home in Florida seemingly to utilize the state's gracious homestead protections. These protections were lost upon the filing of bankruptcy, which begs the question as to why Mr. Rensin went into bankruptcy. Mr. Rensin used all, or almost all, of his remaining $2,000,000 to purchase two annuity contracts from a Cayman Islands annuity carrier in December of 2015.[9] These annuities were written to provide lifetime payments to Mr. Rensin, with the residue of assets held under the variable annuities to be owned by the Trust after Mr. Rensin's death.

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[6]Arguelles & Company, LLC is one of the premier law firms in Belize. They are "Top Ranked" by Chambers Global and represent such clients as Credit Suisse, Bloomberg, and Chevron. Emil Arguilles, the founder of the firm, is a member of both the Belize Bar Association and the New York State Bar Association.

[7] *In re Rensin,* at *9.

[8] *Id.* at *11.

[9] *Id.* at *10.

One annuity went to "fixed payment mode" immediately upon funding. This gave Mr. Rensin the irrevocable right to receive $15,000 per month for the rest of his life, with the remainder of the annuity assets, with the contractual wrapper, to be held by the Trust after his death.

Under the second annuity contract, Mr. Rensin had no enforceable legal right to receive payments until the contract went into "payment mode." Until then, the Trust had the ability to prevent Mr. Rensin from receiving payments from this "variable" annuity.

The variable annuity gave Mr. Rensin a right to borrow up to 90% of the value of the assets held under each contract, but the Trustee had the right to cancel the annuity at any point in time, effectively making Mr. Rensin's right to borrow subject to veto.

Mr. Rensin also had a $79,014 Regions Bank account that was funded solely from the $15,000 per month annual payments received from the annuities, which he claimed was exempt under the Florida statute.

The court's opinion primarily touches on the following questions:

1. Will Florida or Belize law apply to the Trust? If Florida law applies, then will the trust assets be considered as being accessible to the trustee in bankruptcy?

2. Will the annuities, annuity payments, and the Regions Bank account that was funded from annuity payments be protected from creditor claims under Florida Statue Section 222.14?

3. Does Florida Statute 222.30 apply? Was the purchase of the annuities fraudulent?

4. What happens to Mr. Rensin's homestead?

DISCUSSION:

"All animals are equal, but some animals are more equal than others."

"Man serves the interests of no creature except himself."

- George Orwell, *Animal Farm*

1. What law is binding?

Mr. Rensin, who must have been sweating like a hippo in the court room, argued that Belize law should apply. He claimed that, since the Trust and the Trust assets were located in Belize, the ruling should be subject to its laws. The FTC, however, claimed that Florida law would be more appropriate, as the State provided the venue for the court proceedings and was the home of the defendant.

The court determined that Florida law should apply, under the rationale that Florida choice-of-law rules are applicable in a bankruptcy court proceeding. Additionally, under these rules, the law of another jurisdiction will not apply if that law is contrary to a public policy of Florida.[10]

The judge cited previous bankruptcy court decisions, decided across various jurisdictions, all with a similar result. This, however, was the first decision where an "old and cold" asset protection trust, that was formed and funded well before a creditor problem was known or expected to have had occurred, was given this treatment.

Like the other bankruptcy court decisions, the judge did not discuss the U.S. Supreme Court case of *Hanson v. Denckla*, which determined that Delaware law had to apply to a Delaware trust when the State of Florida had no *in rem* jurisdiction over the testatrix. While this case was ultimately decided on the lack of personal jurisdiction, the Supreme Court analyzed the legitimacy of a "Full Faith and Credit Clause" argument, in which Delaware would have to honor the decisions of the Florida courts, and visa-versa.[11] The Supreme Court found that Delaware was not required to honor the judgment of the Florida court, given that the Florida court lacked initial jurisdiction. Richard Nenno, a well-published author who has written extensively on the subject of trust jurisdiction, writes that "*Hanson* continues to be the starting point for analyzing whether personal jurisdiction exists in trust cases."[12]

Interestingly, Mr. Rensin had litigated over personal jurisdiction in the past. In the case *Rensin v. State,* the Attorney General of Florida sued Mr. Rensin and his two businesses (collectively "BlueHippo") for violation of the state's Deceptive and

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[10] *Id.* at *7

[11] *Hanson v. Denckla,* 357 U.S. 235, 78 S. Ct. 1228 (1958).

[12] Portfolio 867-2nd: Choosing a Domestic Jurisdiction for a Long-Term Trust, Detailed Analysis, IV. Beneficiaries' Ability to Defeat Clients' Section of Trust Sales

Unfair Trade Practices Act as well as its Retail Installment Sales Act.[13] The State argued that Mr. Rensin had falsely advertised his business and breached the contracts that BlueHippo made to customers.[14] The First District Court of Appeals, however, found that they did not have jurisdiction and remanded the case.[15]

The *Hanson v. Denckla* decision, and subsequent decisions that support the proposition that Florida law should *not* apply to this Trust are discussed in depth in LISI Newsletter #363 by Alan Gassman and Kateline Tobergte, which can be viewed by clicking here.[16] Richard Nenno's discussion on the *Hanson* decision may be found in his BNA Portfolio 867-2.[17]

Notwithstanding the conclusion that Florida law should apply to this Trust, the judge noted that the court did not have jurisdiction over Orion Trust Company, which is probably because it was not served and has never done business in the United States. During the ongoing litigation, the trustee of the Joren Trust sought guidance from the Supreme Court of Belize. The Court advised the Trustee not to hand over any assets to the FTC. The Court repeatedly notes that its decision would carry more weight, and would be broader in scope, had the Joren Trustee been added as a party to the litigation, so stay tuned for the next exciting season in this interesting drama.

2. Does Florida Statute § 222.30 apply?

The bankruptcy court found that the fixed annuity, which was paying $15,000 a month, qualified for protection under the Florida statutes. Therefore, Mr. Rensin's interest would be exempt from attachment by creditors, assuming that Section 222.30 of the Florida Statutes did not apply. Section 222.30 is aimed at preventing the conversion of assets that would be subject to creditor claims into exempt assets for the purpose of avoiding creditors, but as we see below, the statute only applies if the debtor makes the transfer. The bankruptcy trustee argued that allowing a transfer of funds into annuity contracts "only encourage[s] fraudulent or inappropriate behavior."[18]

Despite the State's argument, the bankruptcy court determined that Mr. Rensin did not make any transfer into the annuities, let alone a transfer for the purpose of avoiding creditors. Instead, the Trustee of the Joren Trust decided to invest the

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[13] 34 Fla. L. Weekly D402 (1st Dist. Ct. App.) (Feb. 2009).
[14] *Rensin v. State*, 18 So. 3d 572, 574 (Fla. Dist. Ct. App. 2009).
[15] *Id.*
[16] *Id.*
[17] https://pro.bloombergtax.com/portfolio/choosing-a-domestic-jurisdiction-for-a-long-term-trust-portfolio-867/
[18] *In re Rensin,* at *33-34.

monies into the annuity contracts. Even if Mr. Rensin *may* have wanted to transfer the funds, the Trustee determined in the end whether or not the funds were to be transferred. Section 222.30, in this case, did not apply.

Judge Kimball applied this finding to all of the monies placed in the annuities, including $350,000 that Mr. Rensin transferred to his lawyer, who then transferred it to the Joren Trust, in order to acquire the variable annuity (just months before the $13.4 million judgment was handed down).[19] The court reasoned that there was apparently no direct evidence indicating Mr. Rensin required, or even requested, that the annuity contract would be procured with the $350,000.

3. What happens to the annuities?

After reaching the conclusion that Section 222.30 did not apply to the transfer of funds to the annuity contracts, the court looked at whether the annuity contracts, and payments from the contracts, were property of Rensin's bankruptcy estate. It held that "[a]lthough exempt from administration, Mr. Rensin's payment rights under [both] annuities . . . are property of the estate."[20]

Next the court looked at the two annuities separately, in order to determine the rights associated with both.

The court closely examined the language of the annuity contract that provided for fixed payments, and determined that it fit within the language of the statute. While the court found that the trustee in bankruptcy has the right to attach and own the remainder interest in the annuity contract, doing so will presumably not result in the loss of Mr. Rensin's sole right to receive payments of $15,000 per month, every month for the rest of his life, and to have monies held under the Regions account or other future bank accounts that he may open and fund with such payments also be exempt from creditor claims.

The court also closely examined the language and circumstances of the second annuity contract, which it referred to as a "variable annuity." This name stems from the ability of the trust company, as owner, to control investments, and to make withdrawals when it deems withdrawals to be appropriate. The court found that Mr. Rensin's interest in the annuity contract was not an annuity subject to Florida Statute Section 222.14 because Mr. Rensin had no right to benefit from the annuity unless

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[19] *Id.*
[20] *Id.* at *11.

or until it began making payments. The court indicated that the annuity contract included confusing language because there was no definition or rule set forth on when payments would begin.

Citing Florida Statute Section 222.14, Mr. Rensin argued that he was entitled to exempt the payments ($15,000 monthly) from administration in the bankruptcy issue. Section 222.14, in relevant part, allows certain annuity payments to be protected from the reach of creditors.[21] There was no discussion as to whether the lawyer who transferred the $350,000 may have liability under Bankruptcy Code Section 548(a)(1) or 550(a)(1), which is what occurred in the case of *In re Harwell,* which was discussed in LISI Newsletter #243, which can be viewed by clicking here.[22] Perhaps the legal counsel was outside the United States and has his assets held by the Orion Trust Company, thus being immune from liability from a practical standpoint.

4. What happens to Mr. Rensin's Florida home?

This issue did not require a great deal of pontification from the bankruptcy court. When filing for bankruptcy, Mr. Rensin did not claim the entirety of his homestead for exemption. Because "he acquired the home within 1,215 days prior to the petition date[,]" he was only able to claim a portion.[23] The bankruptcy court argued that the homestead exemption was improper under Section 522(o) of the Bankruptcy Code, which disallows homestead exemption in cases where homes are purchased in an attempt to keep assets out of the reach of creditors.[24]

The Court ruled, on the issue of homestead protection, that Mr. Rensin's home was not protected. Even when, in a last ditch effort, Mr. Rensin attempted to claim a *Maryland* homestead exemption (for a home in Florida), the Court found that the only state exemption law which applied was Florida's.[25]

Conclusion:

Joseph Rensin had thought that he was slicker than a greased hippo. He moved to Florida to protect his homestead, and he quickly moved his Trust to Belize to protect his assets. However, he did not emerge from the proceedings unscathed.

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[21] Fla. Stat. § 222.14

[22] http://leimbergservices.com/openfile.cfm?filename=d%3A%5Cinetpub%5Cwwwroot%5Call%5Clis%5Fapp%5F243%2Ehtml&criteria=harwell

[23] *In re Rensin*, at *46

[24] 11 U.S.C. § 522(o).

[25] *In re Rensin,* at *47.

Judge Kimball wrote an excellent opinion that explains his findings and helps to clarify Florida Statute Section 222.30, when an annuity is protected under Florida law, and when an offshore trust will be respected in great part, notwithstanding the fact that the law of the debtor's residence may apply. The judge was smart, but in this case it doesn't take an Arnold Ziffel, the pig from Green Acres, to figure out that the home was not protected.

If this had been a 2014 judgment as the result of an otherwise innocent car accident or a business deal gone awry, the result may have been different. Bankruptcy judges typically feel a duty to creditors who have been flim-flammed, and will continue to "legislate" to a reasonable degree until higher court decisions may overrule these bankruptcy court level decisions.

It will be interesting to see whether the creditors pursue a contempt holding, given that the Trust was formed and fully funded with apparently legitimate funds well before the flim-flam creditor problem occurred.

As mentioned above, the court spent most of its decision on the treatment of the annuities. Although the variable annuity was not protected during the bankruptcy proceedings, Mr. Rensin had no interest in it that a creditor could take. The Joren Trustee can now easily convert it to a fixed annuity. These annuities turned out to be a house made of bricks, incapable of being blown down even by the Big Bad Judge Kimball.

One thing is sure: All good children with their assets in Asset Protection Trusts may sleep well expecting that they can move to Florida, or another state that has protection laws for annuities or life insurance, and then have an independent trustee buy those assets *for them* before they declare bankruptcy, and everything will be a-okay… at least until the next decision.

Right now, it seems that even a hog (or in this case a hippo) may have the ability to safeguard some degree of assets when competent planning occurs. While Mr. Rensin was able to keep *some* of the assets, most everything he had is gone, including his companies. The age-old phrase may have changed in this case: "Pigs get fat, while well represented hippos might not get slaughtered."

Stay tuned, as we will monitor this case and report on subsequent developments as they occur.

The $1,500,000 Letter

How the use of one little "a" and two divorce petitions cost $1,500,000, plus attorney's fees.

By: Alan Gassman, Phil McLeod, and Joe Cuffel

If this Florida divorce case was anything like NBC's *Wheel of Fortune*, the answer to the question, "Can I buy a vowel, Pat?" could be: "you can…for $1.5 Million."

This article looks at *Famiglio v. Famiglio,* a case decided by the Second District Court of Appeal. In the May, 2019 decision, the Second District Court of Appeal (the District Court) found that, in one of the clauses in the Famiglio's Prenuptial Agreement, the indefinite article "a" was so significant that it cost the former wife $1,500,000. The holding ultimately turned on deciding the meaning of the phrase "the time *a* petition for dissolution of marriage is filed" (Emphasis added).

Mark Famiglio married Jennie Lascelle Famiglio in 2006. Weeks before their marriage, Mark and Jennie entered into a Prenuptial Agreement. There was a specific provision in the Prenuptial Agreement that outlined how much alimony Jennie would receive in the event that the marriage was dissolved. It was to be scaled in accordance with the length of the marriage measured in full years.

The operative and deciding provisions of the Prenuptial Agreement are as follows:

> 5.1. In the event the marriage of the parties is dissolved by a court of competent jurisdiction, then the parties shall have no obligation to make payments of any kind or for any purpose to or on behalf of the other, except as specifically set forth in Paragraph 5.2 and 5.3.
>
> 5.3. JENNIE's Benefits and Obligations. If the marriage ends by dissolution of marriage or an action for dissolution of marriage is

> pending at the time of MARK's death, then JENNIE shall receive the additional benefits and obligations described in 5.3.a. through d.
>
> a. MARK shall pay to JENNIE, within ninety (90) days of the date either *party files **a** Petition for Dissolution of Marriage* the amount listed below next to the number of full years they have been married at the time a Petition for Dissolution of Marriage is filed. (Emphasis added.)

The primary issue in this case was that Jennie filed two different petitions. She filed one on March 25, 2013, but that petition was never served and Jennie voluntarily withdrew the petition without prejudice on September 13, 2013, perhaps assuming that she had done enough to have alimony based upon "a" Petition for Dissolution of Marriage having been filed in 2013. The second petition was filed about 3 years later on May 26, 2016. This Petition was served and resulted in the dissolution of marriage.

According to the prenuptial agreement, if the filing in 2013, after seven years of marriage, was ". . . at the time a Petition for Dissolution of Marriage is filed", then the amount of alimony to be paid from Mark to Jennie would be $2.7 Million. However, if the filing in 2016, after ten years of marriage was ". . . at the time a Petition for Dissolution of Marriage is filed", then, the amount escalated to $4.2 Million. The Trial Court was "unpersuaded that some deliberate choice of the article 'a' instead of 'the' in 5.3 dictates the result in [the] action." Thus, the Trial Court determined that it was the filing of the 2016 petition, which resulted in the actual dissolution of marriage, that controlled and awarded the wife $4.2 Million. The husband appealed this decision.

The Second District Court of Appeal (the District Court) reviewed the case de novo because the interpretation of the Prenuptial Agreement was considered to be an interpretation of a contract – where the decision is a matter of law. The District Court's decision turned on one question: which Petition triggered the determination of the amount of alimony: the one filed in 2013 or the one filed in 2016?

As noted above, the District Court's ruling hinged on the interpretation of the line: ". . . the time a Petition for Dissolution of Marriage is filed." The Trial Court placed no importance on the use of the "a" in this portion of the Agreement. Specifically, the District Court found that the use of the indefinite article "a" instead of another, more definite, article such as the word "the" was persuasive.

The District Court found that because the contract used the word "a", it denoted the possibility that the noun that followed, "Petition", was, "in some way, variable, unidentified, or unspecified." Thus, the District Court found that the use of "a" left open the possibility that more than one petition for dissolution could be filed but that the Agreement does not inform the parties which filing date is to be used. The District Court held that "the intent of this discrete provision is to link the lump sum alimony measurement to a singular occurrence." In this case, that singular occurrence was "the first time such a petition is filed." The District Court decided that it was appropriate to use "the 2013 Petition as the year of measurement for purposes of this section of the parties' prenuptial agreement."

As mentioned above, the District Court looked at this case de novo because it was determined that the decision as to the interpretation of the contract was a matter of law (on equal footing with the Trial Court). After taking a fresh look at the case, the District Court went through a series of steps to reach its ultimate conclusion (and help "solve the puzzle" of this agreement by elucidating the phrase in question). Those steps are briefly outlined below. The analysis conducted by Judge Lucas in writing his opinion was organized, concise, and flowed logically and practically. Overall, it was a very well-written opinion that is well-worth the read.

Below is a brief discussion of how the District Court reached its decision:

Step 1: Undermine the Trial Court's decision which stated that "multiple absurd results" would occur if the Prenuptial Agreement was interpreted to mean "any" Petition for Dissolution of Marriage.

The Trial Court enumerated some hypothetical situations that could yield "multiple absurd results" if it were to assume that "any" Petition for Dissolution of Marriage would trigger 5.3.a. The District Court did not entertain these hypotheticals, seemingly, for two reasons: the hypothetical situations posed by the Trial Court differed from the facts at hand and the ambiguity analysis (discussed below) would not yield one rational and one "absurd result", but, rather, the analysis could deliver two rational, though vastly different, results. Judge Lucas discusses these possible results in Footnote 4 of his opinion.

The language, as interpreted by Jennie, could yield one reasonable outcome – that "these sections illustrate an intent that the lump sum alimony payment should more closely reflect the total number of years the parties were actually married by the time that their marriage is dissolved."

Alternatively, Judge Lucas notes, Mark would counter that "the underlying intent could have been that initiating 'a petition' for dissolution of marriage was deemed to be so momentous that the parties agreed to tie an attendant consequence to its very filing."

Judge Lucas continues, "both intentions are equally plausible, and, on this record, equally unknowable." This is an ambiguity, and one that could yield two very different, yet still plausible, interpretations.

Step 2: Determine whether or not the phrase in the contract was clear and unambiguous.

While the parties contended, and the Trial Court agreed, that there was no ambiguity, the District Court found that there was an ambiguity, or at least the argument that a latent ambiguity was present: a latent ambiguity being one that "arises when the language in a contract is clear and intelligible, but some extrinsic fact or extraneous evidence creates a need for interpretation or a choice between two or more possible meanings." As discussed above, there was a possibility for more than one meaning which needed to be interpreted by the courts.

Step 3: Examine the plain language to construe the text but not to "rewrite the contract."

The District Court sought to resolve the interpretation issue by looking at the plain language of the text, but not adding to it, as the District Court stated that the Trial Court had done. The Trial Court seemed to add "when that petition results in a dissolution of marriage" in its interpretation of the phrase "at the time a petition for dissolution is filed". The District Court noted that, "as clarifying as it would seem, that is a term of the trial court's invention." So, the District Court looked to the actual definition and common usage of the indefinite article "a".

Step 4: Establish the importance of using an indefinite article.

Judge Lucas stated that the Trial Court had the "assessment that the indefinite article "a" . . . holds no real importance. We respectfully disagree. The use of this indefinite article is the heart of the problem here."

Using the word "a" was important, because the entire purpose of using an indefinite article is to alert the reader that the following noun is "in some way variable, unidentified, or unspecified." It denotes the "generic, possible occurrence

of an unspecified petition for dissolution of marriage being filed by one of the parties."

This makes sense. When we speak, we, consciously or unconsciously, use definite and indefinite articles. Compare the following two statements:

1. "The meeting will take place at the time described."

2. "A meeting will take place at a time described."

Under Alternative No. 1 above, both the meeting and the time are established and definitive. Someone knows the details of the time and the meeting. The second sentence, on the other hand, describes a meeting and a time which will apparently be determined at a later time. The meeting and time are unspecified and indefinite. They are conditioned on some future decision or action to come to fruition.

Step 5: By virtue of having an indefinite article, the contract is presumed to contemplate the possibility for more than one petition, and, given the common usage, the first satisfied condition in time becomes the operative one.

"By utilizing an indefinite article here, the filing date measurement of Section 5.3.a. leaves open the possibility that more than one petition for dissolution of marriage could be filed…" So, if the contract leaves open the possibility for more than one petition, the next step is to determine which one is the operative one. The District Court concludes that, in normal usage, when a future, predetermined outcome is conditioned on some triggering event, the first occurrence of the triggering event is the operative one.

Judge Lucas used a great analogy to describe how this mode of operation is applied, which is set forth below:

Thus, a golf course's rule, "when a thunderstorm approaches, you must end your golf game," would be universally understood to mean the first time a thunderstorm approaches. Certainly, more than one storm might come and go throughout the day, but the rule would make little sense if it were construed to mean whichever storm the golfer chooses, so long as the game is ended.

The "thunderstorm" in this case is when "a petition" is filed. Thus, when the first petition is filed, it is the operative one that triggers the rule: that the alimony be set based on the years accrued at the time of filing this first petition.

Step 6: Conclude that the first petition is the operative one and rule in favor of the husband.

By virtue of the aforementioned logical flow, the District Court found that using the word "a" meant that the first petition would be used to set the alimony amount to be paid. Therefore, the court ruled that the 2013 petition would be used. This decision, determining the meaning of the word "a", saved the husband $1.5 Million in alimony payment.

Conclusion

It really is a "Wheel of Fortune" out there for lawyers who draft agreements and try to get every word exactly right. In this case, Judge Lucas, much like Vanna White, touched on the highlighted "a" and revealed how valuable it was.

Even the most diligently written prenuptial agreement is subject to interpretation as conditions arising subsequent to the agreement manifest themselves, in potentially unforeseen ways. It is impossible to foresee all the potential circumstances under which a marriage might dissolve, but it will be important for attorneys and clients alike to understand the potential that a single word can have on the proceedings. When it comes to solving the puzzle of drafting an airtight prenuptial agreement, it is insufficient for attorneys to just spin the wheel and hope for the best. Prenuptial agreements demand very careful drafting. At the very least, it will be advisable for attorneys drafting prenuptial agreements in the future to ensure that all the "i's" are dotted, all the "t's" are crossed, and, perhaps most importantly, all the "a's" are where they are truly meant to "b".

Do Not Use your Cell Phone While Driving in a Work or School Zone

By Maxwell Potter

As mentioned in our previous July 4th Thursday Report, Florida introduced over a hundred new laws that took "effect" on July 1st. One of particular importance you should be aware of is House Bill 107, which deals with the use of mobile phones and wireless communications while driving.

Beginning July 1, 2019, the Bill amends the Florida Ban on Texting While Driving Law to change the current enforcement of the ban on texting while driving from a secondary offense to a primary offense. This change will allow a law enforcement officer to detain a motor vehicle operator solely for texting while driving.

The Florida Ban on Texting While Driving Law prohibits a person from texting, emailing, and instant messaging while driving for the purpose of nonvoice interpersonal communication.

A driver in a vehicle that is not moving is **not** subject to the statutory ban on texting while driving. In addition, the ban does not apply to a motor vehicle operator who is:

- A first responder operating an emergency vehicle while performing his or her official duties.
- Reporting an emergency, criminal activity, or suspicious activity to law enforcement authorities.
- Receiving messages that are related to the operation or navigation of the motor vehicle, safety-related, data used primarily by the motor vehicle, or radio broadcasts.
- Using a navigation device or system.
- Conducting wireless interpersonal communication that does not require manual entry of information or require reading text messages, except to activate, deactivate, or initiate a feature or function.
- Operating an autonomous vehicle in autonomous mode.

Violation of the ban on texting while driving carries a $30 fine plus court costs, which could result in a total fine up to $108. A second or subsequent violation of the ban committed within five years after the date of a prior conviction is a moving violation with three points added to the driver license record and carries a $60 fine plus court costs, which could result in a total fine up to $158. In addition to these penalties, any violation of the ban that causes a crash results in six points added to the offender's driver license record. Any violation of the ban committed in conjunction with any moving violation for which points are assessed, when committed within a school safety zone, results in an additional two points added to the offender's driver license record.

Beginning October 1, 2019, the Bill prohibits the use of a handheld wireless communications device while driving in a designated school crossing, school zone, or work zone area (when construction personnel are present on the road or immediately adjacent to the area).

From October 1, 2019, to December 31, 2019, law enforcement officers may provide a verbal or written warning and beginning January 1, 2020, may issue a uniform traffic citation for a violation, which is punishable as a moving violation with three points assessed against the driver's license.

For both the texting while driving ban and the handheld prohibition, the Bill *requires* a law enforcement officer to inform the motor vehicle operator of his or her right to decline a search of his or her wireless communications device. Consent to search a motor vehicle operator's wireless communications device must be voluntary and unequivocal.

The Bill prohibits a law enforcement officer from:

- Accessing the wireless communications device without a warrant.
- Confiscating the wireless communications device while awaiting issuance of a warrant to access such device.
- Obtaining consent from the motor vehicle operator to search his or her wireless communications device through coercion or other improper method.

Forbes Corner

Tax Alert For IRA And Pension Account Holders by Alan Gassman

Below is a link for a recent article published to Forbes regarding IRA and pension account holders and how two pieces of congressional legislation could impact them.

Link: https://www.forbes.com/sites/alangassman/2019/06/19/tax-alert-for-ira-and-pension-account-holders/#3333cfbf30f2

For Finkel's Followers

How A Bowl of Macaroni Can Help Make You Millions

Think that you have what it takes to be a good leader? Try teaching a 10 year old how to make macaroni and cheese from scratch. This one activity will give you insight into your own leadership skills (and weaknesses) and help you build a stronger, more profitable business.

No One Is Born A Chef

My son was eager to learn how to cook. He gathered together the ingredients on the list and carefully laid them out on the counter. He then began to read through the recipe, and he stopped when he came to the word "Roux." A look of panic washed over his face as he realized that this seemingly simple task had suddenly become much bigger.

Most business owners have the same look of panic when asked to set up controls and systems for their businesses. At first, it seems like an easy task. Make a few flowcharts, write out a few word documents and you should be done in time for lunch. But the truth is, you don't yet have the experience to build out all your systems successfully. You have so much to learn from the practical experiences of growing your business. Before the bowl of macaroni, my son needed to learn some basic cooking techniques, much like you do with your business. Regard building systems as an iterative process—one you simply do bit by bit.

Much like in cooking, the best businesses are developed over time.

Good Food Takes Time

After a few YouTube videos, my son was able to craft a cheese sauce that wasn't half bad. He then mixed it with the pasta and declared the dish complete. When I pointed out that there were a few steps remaining- mainly the 30 minute bake time- he, once again, looked defeated.

The process of building your business systems can feel like forever. You are hungry and eager, but rushing the process will leave you with a subpar end result.

You won't ever have time to sit down and write out all your business systems in one fell swoop. This is not only an unreasonable fantasy; it would actually be quite dangerous. Why? First, at this stage, you are needed to both generate sales and handle part, if not all, of the operational side of your business. If you stop all this to exclusively create systems, your business will die. Think of it like your beating heart. Just as your body needs blood circulating, your business needs sales and cash flow. The key is to build your systems and infrastructure while maintaining your focus on generating sales and fulfilling your promises to clients.

Patience will be rewarded 10-fold.

Too Many Cooks Won't Spoil Your Business

One of the best ways to get kids to eat healthy is to involve them in the cooking process. My son now knows how to prepare a meal, and he understands the difference between something that is home cooked and something that comes from a box.

The same is true for your staff. If you try to step away from the business and complete your business systems in one sitting, you'll end up force-feeding your team mandatory systems that you created without getting their input or meaningfully engaging your team in this process.

If you want your team to use, refine, and live your systems, you've got to get their involvement in creating them along the way. They are much more likely to adopt a system they helped create.

The end result: a tasty bowl of macaroni worth millions!

Thoughtful Corner

Quotes by Alan Gassman during a presentation recently given at a Medical Conference

Okay, so what I would like for you to do is to spend 1 minute, maybe 90 seconds, and write down a 90-day goal, a 3-year goal, a 10-year goal, and a lifetime goal. When you write something down, that connection between the subconscious mind and what you wrote down can have an important impact. I do not think that happens when you type something or when you text it. I will give you 1 minute, or what we call a tenth of a billable hour in my profession.

Please be very weary of deals where the businesspeople show up and they get you involved. I want you to remember the famous story, "The Doctor always starts off by putting in the money, and the businessman has the experience. 10 years later, the businessman has the money, while the doctor has had quite an experience." Now, I am not talking about your office and I am not necessarily talking about business or practice-related activity that you all know and understand. But when it is *trucking* or *ice machines*, run away as fast as you can.

So here is a New York Times study. They took 2,862 funds that performed in the top quartile for one year to see how many would perform in the top quartile for the next *four years.* How many performed? 2 of them. Do not pay for past performance.

The median home in your area has gone up 3.5% a year. The Median home is not your home. The median home is always 20 years old and *never* needs to be fixed up. Your home is getting older every year and is breaking all the time. So the average rate of return for your home is not 3.5%, but more like 1.9%.

If it is too good to be true, it is too good to be true. Why would this person on a jet plane fly into your town and have this 9% promised rate of return? Because his widget farm is better than anyone else's widget farm? Well guess what? Corporations borrow money at 5 or 6%, why is this person promising you 9%? What is the reason for this?

Humor

Emperor Nero knew about BBQ. His signature dish: Rome. Date served: July 18, 64 AD.

On July 18, 1966, Carl Sagan turned one billion seconds old while sitting and eating at a KFC. He wished, at the time, that he was 999,999,996 seconds old. At KFC, everyone wants to go back fo(u)r seconds.

July 18, 1936: The first Oscar Meyer Wienermobile rolled out of the General Body Company's factory in Chicago, IL. Oscar Meyer has announced that, in honor of National Hot Dog Day, they are listing the Wienermobile on Airbnb. People can rent out and sleep in the 27 foot mobile hot dog for $136/ night. The hosts for the Weinermobile posted the following listing description:

> "We've been driving a 27-foot-long hot dog around the country for the past couple of months. While traveling the hot dog highways we've seen some franktastic places and met some bunderful people. So, we've decided to share the love by renovating America's favorite hot dog on wheels and turning it into a Wienermobile you can stay in overnight for the first time ever. We can't wait to meat you!"

It is a well known fact that, on this day in 1927, Ty Cobb got his 4,000th MLB career hit. A lesser known fact, Ty's middle name was "Corn on the".

You can buy 135 Smoky Mountain BBQ Plates from KFC for $718.19.

John Glenn, born July 18, 1921, was the first American to orbit the Earth. He was also the first American to eat in space. Unfortunately it was not KFC or BBQ. He just had applesauce.

The Germans, during WWII, flew the Messerschmitt Me 262 for the first time on this day in 1942. The 262 was the world's first operational jet-powered fighter plane. To think how far technology has come... Now, KFC wants to send its Zinger Spicy Chicken Sandwich to space via a high-altitude balloon called a Stratollite. Richard Branson, born on July 18th, also wants to make it to space. It appears that the new Space Race is truly on. Interestingly, fellow birthday-mate of Branson, John Glenn, has beaten them both to the punch. (John could have "grilled" two birds with one "stove" if he had KFC with him instead of applesauce)

At the barbeque restaurant, what did the judge add to his tea?
Just ice.

Upcoming Events

Date	More Information	Topic	
7/25/2019	REGISTER HERE	David Blain presents: What I Wish Lawyers and CPAs Knew About Pension Plans Part 1 from 12:30 PM to 1 PM EST (Moderated by Alan Gassman)	Learning at Lunch Webinar Series
7/30/2019	REGISTER HERE	Lester Perling presents: Health Law Legislative Update from 12:30 PM to 1 PM EST (Moderated by Alan Gassman)	Learning at Lunch Webinar Series
8/1/2019	REGISTER HERE	Srikumar Rao presents: Dealing with Challenges Ethically from 12:30 PM to 1 PM EST (Moderated by Alan Gassman)	Learning at Lunch Webinar Series
8/8/2019	REGISTER HERE	Alan Gassman presents: Florida Creditor Protection for Medical Practices from 12:30 PM to 1 PM EST	Learning at Lunch Webinar Series
8/15/2019	REGISTER HERE	David Blain presents: What I Wish Lawyers and CPAs Knew About Pension Plans Part 2 from 12:30 PM to 1 PM EST (Moderated by Alan Gassman)	Learning at Lunch Webinar Series
8/19/2019		Alan Gassman presents: Tax Planning With Real Estate Under Section 199A and More (1 hour) The Florida CPA's Guide to Creditor Protection for Your Clients (1 hour)	FICPA Sandspur Chapter Meeting
8/20/2019	MORE INFO	Alan Gassman presents: Estate Planning 101 at a time TBD	Community Event at Aging & Wellness Institute in Clearwater, FL
8/22/2019	REGISTER HERE	Steve Hogan presents: The Wayfair Case: What Now? from 12:30 PM to 1 PM EST (Moderated by Alan Gassman)	Learning at Lunch Webinar Series

8/29/2019	REGISTER HERE	Larry Heinkel presents: Common CPA Mistakes that Cause IRS catastrophes Part-2 from 12:30 PM to 1 PM EST (Moderated by Alan Gassman)	Learning at Lunch Webinar Series
9/5/2019	REGISTER HERE	Ken Crotty presents: Nuts and Bolts of Florida LLC Law and Practices from 12:30 PM to 1 PM EST	Learning at Lunch Webinar Series
9/12/2019	REGISTER HERE	Michael Lehmann presents: Form 1023 Line by Line from 12:30 PM to 1 PM EST (Moderated by Alan Gassman)	Learning at Lunch Webinar Series
9/12/2019 through 9/15/2019		Represented in the Exhibit Hall	FOMA Mid-Year Seminar at Grand Hyatt Tampa Bay
9/13/2019	REGISTER HERE	Alan Gassman presents: Asset Protection and Protecting Your Family from 4 PM to 5 PM EST	FOMA Mid-Year Seminar at Grand Hyatt Tampa Bay
9/19/2019	REGISTER HERE	Colleen Flynn presents: Hiring Employees-10 Practical and Legal Strategies from 12:30 PM to 1 PM EST (Moderated by Alan Gassman)	Learning at Lunch Webinar Series
9/26/2019	REGISTER HERE	Colleen Flynn presents: Terminating Employees from 12:30 PM to 1 PM EST (Moderated by Alan Gassman)	Learning at Lunch Webinar Series
9/26/2019 through 9/27/2019		Represented in the Exhibit Hall	Notre Dame Tax & Estate Planning Institute in South Bend, IN
9/27/2019	REGISTER HERE	Alan Gassman presents: Application of Section 199A, and its Interaction with Other Income Tax Rules, to Real Estate Investors, Operators and Developers from 3:30 PM to 4:30 PM EST	Notre Dame Tax & Estate Planning Institute in South Bend, IN
10/3/2019	REGISTER HERE	Barry Flagg presents: New York Best Interest Rule for Life Insurance – A Game Changer from 12:30 PM to 1 PM EST (Moderated by Alan Gassman)	Learning at Lunch Webinar Series

10/10/2019	REGISTER HERE	Jonathan Blattmachr presents: On the Front Line with JB; What America's Number One Estate Planner is Thinking from 12:30 PM to 1 PM EST (Moderated by Alan Gassman)	Learning at Lunch Webinar Series
10/10/2019 through 10/12/2019	REGISTER HERE	Alan Gassman to attend	Florida Bar Tax Section Fall Meeting at The Don CeSar in St. Pete Beach, FL
10/17/2019	REGISTER HERE	David Finkel presents: The Freedom Formula: 4 Simple Steps to Grow Your Company or Professional Practice Without Sacrificing Your Family, Health, or Life from 12:30 PM to 1 PM EST (Moderated by Alan Gassman)	Learning at Lunch Webinar Series
10/22/2019		Alan Gassman presents: Advanced Wealth Preservation Planning for Trust and Tax Advisors	Florida Bar Tax Section Asset Protection Event at University of Miami School of Law in Miami, FL
10/24/2019	REGISTER HERE	Christopher Denicolo presents: Florida Revocable Trust Debate--Separate, TBE or JEST--What is BEST? from 12:30 PM to 1 PM EST (Moderated by Alan Gassman)	Learning at Lunch Webinar Series
10/24/2019		Alan Gassman presents	Accounting & Tax Conference at Florida Gulf Coast University in Fort Meyers, FL
10/31/2019	REGISTER HERE	Barry Flagg presents: Should Irrevocable Life Insurance Trusts (ILITs) be domiciled in NY? from 12:30 PM to 1 PM EST (Moderated by Alan Gassman)	Learning at Lunch Webinar Series
11/7/2019	REGISTER HERE	Michael Lehmann presents: Noncash Charitable Giving - Part 1 from 12:30 PM to 1 PM EST (Moderated by Ken Crotty)	Learning at Lunch Webinar Series

11/7/2019	REGISTER HERE	Alan Gassman presents: Creative Planning and Traps for the Unwary Under Section 199A from 9:35 AM to 10:25 AM EST	FICPA UF Accounting Conference
11/10/2019 through 11/15/2019	REGISTER HERE	Alan Gassman presents: Important Qualities of Clients who Hit Multiple Grand Slams How to Avoid Legal Entanglements that can Ruin the Best of Plans and Intentions	Maui Mastermind Wealth Summit at The Fairmont Orchid in The Big Island, HI
11/14/2019	REGISTER HERE	Michael Lehmann presents: Noncash Charitable Giving - Part 2 from 12:30 PM to 1 PM EST (Moderated by Ken Crotty)	Learning at Lunch Webinar Series
11/21/2019	REGISTER HERE	Alan Gassman presents: Planning for Florida Dental Practices and Their Owners from 12:30 PM to 1 PM EST	Learning at Lunch Webinar Series
12/5/2019	REGISTER HERE	Barry Flagg presents: What To Ask For To be Able to Actually "Read" A Life Insurance Illustration? from 12:30 PM to 1 PM EST (Moderated by Alan Gassman)	Learning at Lunch Webinar Series
12/12/2019	REGISTER HERE	Barry Flagg presents: Indexed Universal Life – Who Says Hedge Funds Are Only For the Rich? from 12:30 PM to 1 PM EST (Moderated by Alan Gassman)	Learning at Lunch Webinar Series
12/19/2019	REGISTER HERE	Alan Gassman presents: Success Tips for First Year Lawyers (and all other professionals) Part 1 from 12:30 PM to 1 PM EST	Learning at Lunch Webinar Series
12/26/2019	REGISTER HERE	Alan Gassman presents: Success Tips for First Year Lawyers (and all other professionals) Part 2 from 12:30 PM to 1 PM EST	Learning at Lunch Webinar Series
1/9/2020	REGISTER HERE	David Finkel presents: The Ten Must-Follow Rules to Leverage Your Personal Assistant to Make Your Life More Fun, Profitable, and Enjoyable from 12:30 PM to 1 PM EST (Moderated by Alan Gassman)	Learning at Lunch Webinar Series
1/23/2020	REGISTER HERE	Christopher Denicolo presents: Explaining the Installment Sale to a Defective Trust from 12:30 PM to 1 PM EST (Moderated by Alan Gassman)	Learning at Lunch Webinar Series