CECB Carnahan, Evans, Cantwell & Brown, P.C.

June 2012

on the Subject

Emily J. Kembell Named Shareholder

Carnahan, Evans, Cantwell & Brown is pleased to announce that Emily J. Kembell has become a Shareholder of the Firm. Emily concentrates her practice in the areas of estate planning and administration, estate, gift and income taxation and probate. She has experience in the preparation of Trust Agreements, Wills, Powers of Attorney and Health Care Directives and experience in the post-death administration of trusts and estates.

Emily received her undergraduate degree from Texas A&M University where she graduated summa cum laude. She received both her J.D. and LL.M. in Taxation from New York University School of Law. Emily is a member of the Missouri Bar, the Arkansas Bar and the New York Bar.

Emily's community involvement has included serving as a member of the Board of the Foundation for Springfield Public Schools, the Board of Directors of the Greene County Estate Planning Council and the Board of Trustees of The Springfield Workshop Foundation.

Meet Our New Attorneys

Christiaan D. Horton

CECB is excited to announce that Christiaan D. Horton has recently joined the Firm. Christiaan is a member of the Litigation/Dispute Resolution and the Transactional Practice Groups. He concentrates his practice in the areas of business, commercial and civil litigation, mergers and acquisitions, corporate and business law, real estate and construction law, condemnation, environmental and utility law. He also represents select clients in certain areas including employment law and probate.

Christiaan has been a member of the Missouri Association of Trial Attorneys since 2004 and was honored in 2009 and 2010 as a *"Rising Star"* in the Missouri and Kansas *"Super Lawyers"* publication. He was a Partner at The Law Firm of Neale & Newman, LLP for twelve years prior to associating with the Firm

He has authored a chapter in the *"Missouri Environmental Law Deskbook"* published by the Missouri Bar, and is a current author for the *"Environmental Law and Regulations section of the Court's" and CLE Bulletin* also published by the Missouri Bar. He is a member of Leadership Springfield, Class XVI, and is as an adjunct professor teaching Environmental Law and Regulations at Drury University. He also serves on the School Board of New Covenant Academy, a Christian school offering private education K4-12, and is a member of James River Assembly in Ozark, Missouri.

Howard C. Wright, Jr.

The firm is pleased to announce that Howard C. Wright, Jr. has joined the Firm as a member of the Litigation/Dispute Resolution Practice Group. Howard concentrates his practice in the area of government law with an emphasis on economic development, planning and zoning, eminent domain, employment, civil rights, state and local taxation, contracts and construction law.

Howard served as City attorney for the City of Springfield for almost 34 years and as City attorney for the City of Cape Girardeau for 3 1/2 years. He also served as an assistant attorney for the Missouri Highway Commission (MoDot) for 2 ½ years.

While serving as Springfield City Attorney Wright was directly involved in key economic development programs for Springfield such as the Downtown Business District, the development of University Plaza, the acquisition of land for the Springfield Ice Park, the Cardinal Baseball Stadium, Jordan Valley Park, the Exposition Center and the downtown parking garages including the development of these properties and other properties through the use of economic development tools.

In 2005, Mr. Wright was awarded the Distinguished Service Award from the Missouri Municipal League, having served on that organization's Board of Directors for a number of years. He also served two terms as President and Vice President of the Missouri Municipal Attorneys Association, and Howard Wright was the first recipient of the Lou Czech Award for outstanding service as a Municipal Attorney.

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Proposed Transfer Tax Changes

By: Thomas D. Peebles, Jr. and Emily J. Kembell

Earlier this year, the Treasury Department released the Obama Administration's 2013 Revenue Proposals, which include several recommended changes to the current federal transfer tax system (estate, gift and generation-skipping taxes). Six of the key proposals set forth in the Administration's plan are summarized as follows:

1. Restore Transfer Taxes to 2009 Levels.

For calendar year 2012, the applicable exclusion amount (or exemption) for estate, gift and generation-skipping taxes, indexed to inflation, is $5,120,000, and the tax rate for amounts in excess of the exemption is 35%. However, unless Congress acts, on January 1, 2013, the amount of the exemptions, the tax rate and the law governing transfer taxes will revert to the law in effect in 2001. That would result in an estate and gift tax exemption of $1 million, a GST exemption of approximately $1.4 million and a top tax rate of 55%.

Rather than retaining the 2012 transfer tax rates and exemptions or permitting the 2001 rates and exemptions to apply, the Administration instead proposes to make permanent the estate, gift and GST tax laws as they applied in 2009. Under this proposal, the maximum tax rate would be 45%, the exemption amount for estate and GST taxes would be $3.5 million and the exemption for gift taxes would be $1 million. The proposal would be effective for estates of individuals dying, or for gifts made, on January 1, 2013, or later.

2. Make "Portability" Permanent.

The 2010 Tax Act introduced a new concept into the federal transfer tax system: portability of the estate and gift tax exemption amount. Under the portability rules, the surviving spouse of a person who dies in 2011 or 2012 may be eligible to increase his or her own transfer tax exemption amount by the portion of the predeceased spouse's exemption that remained unused at the predeceased spouse's death (in other words, the exemption is "portable"). This portability of the exemption amount between spouses for both estate and gift tax purposes, however, is due to expire at the end of calendar year 2012. Under the Administration's proposal, the portability rules contained in the 2010 Tax Act would be retained and made permanent.

3. Modify Rules on Valuation Discounts.

In an effort to reduce the use of valuation discounts for family limited partnerships, limited liability companies and other family-owned entities, the Administration proposes that new valuation rules be enacted. The proposal would allow the IRS to disregard for estate and gift tax purposes certain restrictions that would otherwise reduce the appraised value of an interest in a family-controlled entity transferred from one family member to another. This proposal would be effective upon the date of enactment.

4. Require a Minimum Term for GRATs.

A Grantor Retained Annuity Trust (GRAT) is an irrevocable trust funded with assets expected to appreciate in value, in which the grantor retains an annuity interest for a term of years that the grantor expects to survive. GRATs can be structured so that the grantor's annuity interest is essentially equal to the value of the assets transferred to the trust, so that no gift tax is imposed upon creation and funding of the trust. At the end of the annuity term, the assets remaining in the trust are transferred to (or held in further trust for) the beneficiaries, generally descendants of the grantor. If the trust assets appreciate in value during the GRAT term in excess of the amount required for the annuity payments, then such appreciated value is transferred to family members tax free. Particularly in these times of low interest rates, GRATs have proven to be a popular and efficient technique for transferring wealth while minimizing (or avoiding) the gift tax cost of transfers, provided that the grantor survives the GRAT term.

The Administration's proposal would require that a GRAT have a minimum term of ten years. This would prohibit the use of short-term GRATs (2 to 3 years) that have been widely used over the last several years and would increase the risk that the grantor will die during the GRAT term and lose the anticipated transfer tax benefits. The Administration's proposal would also impose a maximum GRAT term of the grantor's life expectancy plus ten years, would require the gift tax value of the remainder interest to be greater than zero at the time the interest is created and would prohibit any decrease in the annuity during the GRAT term. All of the proposed changes would apply to GRATs created after the enactment date.

5. Limit the Duration of the Generation-Skipping Transfer Tax (GST) Exemption.

The GST tax is imposed on gifts and bequests made to individuals who are two or more generations younger than the person making the transfer ("skip persons"). Without a GST tax, it would be possible to avoid estate and gift tax liability through the use of trusts that give successive life interests to multiple generations of beneficiaries. However, each person has a GST exemption which can be allocated to transfers made to skip persons or to trusts for skip persons ("GST Trusts"). Accordingly, it is possible to "skip" transfer taxes on amounts equal to the GST exemption (currently $5,120,000), plus all appreciation and income on that amount during the existence of a GST Trust.

At the time the GST provisions were first enacted, the law of most states included a common law Rule Against Perpetuities (RAP), or some statutory version of it, which prohibited trusts from continuing in perpetuity. The RAP limited, then, the amount of time that GST Trusts could exist and take advantage of the GST exemption. In recent years, many states (including Missouri) have repealed the RAP or lengthened the amount of time that assets can remain in trust. As a result, it is currently possible to create "Dynasty Trusts" which last in perpetuity and take advantage of the GST exemption forever.

The Administration's proposal would severely restrict the use of "Dynasty Trusts" by directing that a GST Trust would no longer be exempted from the GST tax after it has been in existence for 90 years. The proposal would apply to GST Trusts created after enactment and to the portion of an existing trust attributable to an addition made after the date of enactment.

6. Eliminate Intentionally Defective Grantor Trusts.

The Grantor Trust rules for income tax purposes are not the same as the Grantor Trust rules for inclusion in the gross estate for estate tax purposes. As a result, it is possible to create a trust in which the Grantor pays the tax on the income earned by the trust (even though the income remains in the trust or is distributed to the trust beneficiaries) but the Grantor is not considered the owner of the trust for estate tax purposes. These types of trusts are often referred to as "Intentionally Defective Grantor Trusts" (IDGTs). One of the benefits of creating an IDGT is that each time the Grantor pays the income tax on the trust's income and gains, the Grantor is effectively making an additional tax-free gift to the trust. The creation of IDGTs and subsequent sale of assets by the Grantor to the IDGT has been a very popular and effective technique, and the Treasury obviously would like to eliminate this planning tool.

The Administration's proposal is that whenever a trust is classified as a Grantor Trust for income tax purposes then (1) the assets of the trust will always be included in the Grantor's estate at the Grantor's death for estate tax purposes, (2) distributions from the trust during the trust term will be considered a gift by the Grantor, and (3) any assets in the trust when the Grantor ceases to be the Grantor for income tax purposes is subject to gift tax. The proposal will, effectively, terminate the traditional planning techniques using IDGTs. The proposal would

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Best Lawyers in America and "Best Law Firms"

CECB is pleased to announce that three of the firm's Shareholder, **Clifford S. Brown, Joseph "Chip" D. Sheppard, III, and Thomas D. Peebles, Jr.** were selected by their peers to be among the elite professionals for inclusion in the 2012 edition of *The Best Lawyers* in America.

The firm also received a U.S. News – *Best Lawyers* "Best Law Firms" first-tier ranking. *Best Lawyers* is regarded by both the legal profession and the public as the definitive guide to legal excellence in the U.S. *Best Lawyers* is based on a rigorous national survey involving more than 3.1 million evaluations of lawyers by other lawyers. (Copyright 2011 by Woodward/White, Inc., of Aiken, S.C.).

Cliff Brown received the singular honor of being selected as Lawyer of the Year in the practice area of Trust and Estates in Springfield, MO and was also selected in the area of Litigation – Trusts and Estates.

Chip Sheppard was selected for inclusion in The Best Lawyers in America in the practice area of Litigation – Securities.

Tom Peebles selected for inclusion in The Best Lawyers in America in the practice area of Trusts and Estates.

Be Careful Planning For Your IRA And Retirement Plan Beneficiaries

By: John M. Carnahan, III

A recent Private Letter Ruling issued by the Internal Revenue Service in late 2011 (Letter Ruling 201208039) only serves as another example of the importance of planning the beneficiaries designated on your IRA or Retirement Plan Beneficiary Designation form. First, one must remember that Private Letter Rulings are only binding between the government and the taxpayer who requested the Ruling and other taxpayers are not entitled to rely on it. However, Private Letter Rulings do serve as excellent examples of the IRS's current analysis and enforcement position on tax issues.

IRA accounts, whether Roth, traditional or non-deductible, all have similarities with qualified retirement plans (whether they be 401(k), profit sharing or ESOPs). All have what are known as "Designation of Beneficiary" Forms. These are very similar to the forms used for purposes of the "Designation of Beneficiary" on your life insurance policies. The forms speak in terms of the Primary Beneficiaries and then the Contingent Beneficiaries if for some reason the primary beneficiary or beneficiaries predecease the account holder. The forms usually allow you to designate multiple beneficiaries, for example, equally among your children or issue per stirpes or other variations thereof, or a portion to a spouse and a portion to children, or in some cases charitable beneficiaries (which is an excellent estate and income tax planning tool for some taxpayers). Also, most plan documents have default provisions to the participant's probate estate.

In the Private Letter Ruling under analysis, a decedent, let us call her Linda, died in 2010, and had already reached her "Required Beginning Date" defined in Section 401 of the Internal Revenue Code (which means Linda had attained the age that required her to begin taking distributions out of the plan) before her death. Linda was survived by four children and she was the owner of an individual retirement account. The Designation of Beneficiary form she had filled out named her "estate" as the beneficiary of the IRA account balance; therefore, she had a probate estate. Linda had a Last Will and Testament that in our practice we would call a "Pour Over Will", meaning whatever assets went through probate were to be distributed or transferred to a trust. Linda had set up a Revocable Trust which divided her trust into two separate shares at death. One share was a Credit Shelter Trust and the other share a Survivors Trust. Her four children were the beneficiaries of both trusts. The Survivors Trust provided that after Linda's bills and expenses were paid, the trust would terminate and the assets in the trust were to be distributed equally among her four children.

The problem or the tax issue here is that the children were seeking to rollover their mother's IRA account balance (an "inherited" IRA), in a tax friendly manner, so that they would be allowed to take the benefits over their remaining life expectancy and not their mother's or a shorter period. Since Linda, their mother, had already started receiving benefits the children were permitted to continue using her life expectancy for determining the minimum distribution required each year. (Note, if Linda had not reached her Required Beginning Date and started taking distributions, the 5-year rule would have applied requiring the entire IRA account balance to be distributed within 5-years of Linda's death.) Let's assume the children were 25 years or younger. That makes a substantial difference in the amount of the required distributions each year, and one must remember that as a general rule, all distributions from a retirement plan or IRA are fully taxable at the time of receipt. Therefore, the shorter life expectancy of Linda accelerates the payment of the income tax. Restated, it is a time value of money calculation, which is one of the theories behind sound tax planning (i.e., normally delay the payment of the tax and leave the assets inside in a non-taxable format to grow and accumulate over an extended period of time). The longer the asset remains in a tax-deferred status, the more money that will accumulate even if you ultimately pay more taxes at the end when you receive the distribution.

The Internal Revenue Service also ruled that the beneficiaries (i.e., the children) ***would*** be allowed to divide their mother's IRA account into four separate shares, which permitted each child to make an individual decision as to how they wanted to ***administer*** and ***invest*** the funds, but subject to the ruling that the maximum period that the payments could be taken out must be calculated using their mother's life expectancy. However, by permitting the account to be segregated into four separate accounts, each child was allowed to transfer their share to their own investment advisor, and one child could take their share immediately and pay the tax up front, while the other three might take it out as slowly as permitted, which, once again, is over their mother's remaining life expectancy in the year of her death.

Unfortunately, with a little bit of planning, Linda could have divided her account into four separate shares for each of her children by making her children the primary beneficiaries on the Designation of Beneficiary form for the IRA rather than her estate. This would have solved all the issues here, i.e., each child would have been allowed to deal with their share the way they wanted, take it to their own investment advisor, and distribute it over their ***own*** life expectancy, a much longer life expectancy, not their mother Linda's shorter life expectancy.

There are numerous alternatives available in how you can use trusts and Designation of Beneficiary forms designating trusts for the benefit of your family, even if you are dealing with minor beneficiaries, for example grandchildren. It takes planning and drafting in order to complete the beneficiary forms in an appropriate manner. However, from a tax planning perspective this is usually money well spent. ■

New Law Governing Roof & Exterior Repair & Replacement

By: Rich Maltby

Missouri's Merchandising Practices Act, which protects consumers, has recently expanded its reach with the enactment of a new statute, Mo. Rev. Stat. § 407.725, governing contractors that "repair or replace roof systems, or perform any other exterior repair, replacement, construction, or reconstruction work on residential real estate." The new law applies to residential real estate defined as new or existing building constructed for one to four families, including detached garages, and creates the following rights and responsibilities involving owners and contractors:

1. A contractor is prohibited from advertising or promising to pay or rebate all or any portion of any insurance deductible as an inducement to the sale of goods or services.
2. An owner may cancel a written contract with a residential contractor to be paid under a property or casualty insurance policy prior to midnight on the fifth day after the owner receives written notice from the insurer that any part of a claim or contract is not covered by the insurance policy.
3. A residential contractor must furnish, in its contract, a notice substantially conforming to language in the statute regarding an owner's right to cancel the contract. (Please contact CECB or your attorney for more information about the notice that must be included.)
4. The contractor must attach a *"NOTICE OF CANCELLATION"* for the owner's use, which again must include certain statutory language and must be easily detachable for the owner. (Please again contact CECB or your attorney for additional information about the precise language that must be included in this notice.)
5. The contractor must return any deposits or payments if the contract is cancelled pursuant to the statute, unless the contractor has performed "any emergency services, acknowledged by the insured in writing to be necessary to prevent damage to the premises," in which case the contractor is entitled to payment for the reasonable value of such services. The contractor must tender the refund within ten days of proper cancellation by the owner less the value of any emergency services provided.
6. A contractor cannot "represent or negotiate…on behalf of an owner…on any insurance claim in connection with the repair or replacement of roof systems, or the performance of any other exterior repair, replacement, construction, or reconstruction work."
7. A violation of Section 407.725 constitutes a violation of the Missouri Merchandising Practices Act, authorizing the owner's ability to recover, among other things, attorneys fees.

The new statute came into effect on August 28, 2011, and it remains to be seen how the statute will be interpreted by Missouri courts under various circumstances. For instance, while the statute clearly protects owners of residential real estate as defined by the statute, it also protects "possessors." It is not clear whether possessors encompasses tenants or any other specific parties or individuals who are not necessarily owners.

It is also not clear whether a residential contractor, in this instance, includes such parties as design professionals. The statute defines residential contractor as "a person or entity in the business of contracting or offering to contract with an owner or possessor of residential real estate to repair or replace roof systems or perform any other exterior repair, replacement, construction, or reconstruction work on residential real estate." The legislature did not address whether the preparation of design drawings and specifications or other services offered by a design professional include repair or replacement work as contemplated by the statute.

There are many other issues that will be left to future debate among owners, contractors, and perhaps insurance carriers, including: (1) whether there is any limitation on what is intended by "any other exterior" work, i.e., does it extend to windows, doors, masonry, siding, landscaping, drainage, lighting, concrete and earthwork?; (2) whether there is any criteria for determining what are "emergency services"; (3) whether an owner has the same ability to cancel an oral contract as it does a written contract; and (4) whether and to what extent the parties may, by contract, alter the rights and responsibilities otherwise enumerated in the statute.

If you are considering entering into a contract for repair or replacement concerning a residential structure or you are or contractor who performs insurance repair work, you will need to modify your forms, contracts, and practices in accordance with the new statutory requirements. If you have any questions, or would like to further discuss this matter, please contact me or another member of our litigation practice group. ■

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be effective with regard to trusts created on or after the date of enactment and to any portion of an existing trust attributable to a contribution made on or after the date of enactment.

7. Summary.

It is important to note that these are proposals only; the Administration's "wish list" for provisions impacting the estate, gift and GST tax law. Given the current political situation in Washington, D.C., the ability of the Administration to get all or any of these proposals enacted is questionable. Still is it useful to understand where Treasury wants to impact traditional estate and transfer tax planning. Clients considering one or more of these estate planning techniques may very well want to move forward now with their planning so as not to be restricted if any of these proposals are, in fact, enacted. Specifically, clients may wish to (1) take advantage of the current $5,120,000 exemption for estate, gift and GST tax purposes; (2) proceed with the use of valuation discounts in making gifts of family controlled entities to family members; (3) create Dynasty Trusts utilizing the current GST exemption for trusts designed to continue in perpetuity; (4) create short-term GRATs before they are eliminated; and (5) create IDGT's now to take advantage of current law.

Please contact any member of the Estate Tax Planning Practice Group (Cliff Brown, Tom Peebles, Doug Lee, Jennifer Huckfeldt, Emily Kembell, John Carnahan or Bill Evans) with questions regarding these proposed changes in the law and/or the estate planning techniques which would be impacted by these proposed changes. ■

For Your Convenience…

Please feel free to utilize our wireless high-speed internet capabilities when visiting our Springfield office. Using your own personal laptop, you can connect to the internet in any of our conference rooms or in our reception area.

Client Corner

The National Tiger Sanctuary

We occasionally share (with permission) something we think readers will find interesting about one of our client's life or hobbies etc. in our newsletter.

As told by Steve Wieczor to Frank C. Carnahan.

A while after Steve retired, his wife, June Guido, suggested that he had sufficiently reorganized and improved their home life, and there were numerous worthy causes that would better benefit from application of his skills. Steve found that worthy cause in the National Tiger Sanctuary ("NTS") (www.nationaltigersanctuary.org/). It was interesting enough that June also volunteers. In addition to volunteering on site, Steve writes about NTS news and interesting things he learns about the cats in his email newsletter, "Tiger Tales" (subscription available at the web site), which includes great photos of the cats.

NTS does not train the animals nor do they make them do any tricks. The staff does not go in with the animals to avoid extra stress for the animal. NTS is not open every day so the animals can rest.They also have scheduled tours, so if they need to close because of a sick animal they can. Global Resources for Environmental Education and Nature, dba National Tiger Sanctuary is a Missouri non- profit corporation formed in 2000 to create a safe, stress free and protected environment for large cats. In spite of the name, NTS is also home to other large cats, including a lion, black leopard, and a mountain lion (aka cougar, puma, panther, and many other regional names). The sanctuary is located at 518 State Hwy BB, Chestnutridge/Saddlebrooke, MO 65630-3046., ¼ Mile West of Hwy 65 at State Highway BB, 10 Minutes North of Branson (Mile Marker 25.5). The facility was built and is supported solely with private funds provided from individuals and membership support. NTS also offers the opportunity for interns from all over the world to come and study under NTS. Many Interns have returned time and time again to volunteer with NTS throughout the years.

NTS is inspected annually by the United States Department of Agriculture (USDA), and the Missouri Department of Conservation (MDC), to ensure its ability to house tigers and other big cats safely for neighbors, visitors and staff. The habitat fencing is 16 foot and flexible so that animals cannot grab on to it to climb, and a loose wire will not break under intense pressure like a rigid wire would.

Large cats come to NTS for a variety of reasons. Some private owners find the large cats who find out too late that these animals can grow up to be more than they bargained for. Or their owners die leaving no one to care for the large cats. Others cats come from respectable zoos that are readjusting their populations to make room for a Species Survival Program.

The large cats eat once a day around 3:30 pm, and only eat raw-meat, chicken, pork, beef, and lately, deer, bones and all. NTS only feeds food approved for human consumption–no processed food or road kill. They love big bones and can crunch them for minutes. If NTS has feeding tours during the day they each typically get an extra two pieces of chicken. Animals are separated when feeding so they do not feel pressured to eat faster and become stressed. Tigers eat about 18 pounds of meat a day, and the Mountain Lion and the Black Leopard are eating about 10 pounds a day. Banshee, the mountain lion, prefers bone-in chicken as she just loves the crunchy sound it makes as she chews, which is usually only twice before she gulps it down. "Chef Stephan" and other volunteers cut the meat up for a few of the animals into pieces as large as your fist. Anything the cats are feed has to fit through a 4" square opening in the fence. NTS freezes the deer hides and gives it to the cats in long strips, which they chew and it cleans their teeth.

Leopards have only two natural enemies in the wild, Lions and Tigers. The scents and sounds must have given Midnight, a black leopard, some high anxiety when she arrived, but that she is quite at home now, stress free and loves to see people. All Leopards have spots, even Midnight. Midnight's spots are just black on black, and go from her head down her back to her long, long tail. Leopards use the mass of that long tail when pursuing prey and need to turn on a dime. The tail turns first and gives its weight and inertia serve to pull the cat's back end around almost instantly. Like from lions and tigers, leopard routinely carry prey weighing hundreds of pounds up trees to secure their meal from predators.

"Flehming" is a behavior common to all large cats, where the cats draw back their lips in a manner that makes them appear to be "grimacing" or "smirking". Large cats flehm when examining scents left by other animals of the same species or prey, to expose the vomeronasal organ and draw scent molecules back toward it. This helps them to detect scents of other members of their species or clues to the presence of prey, e.g., urine. There is a difference in Lions and Tigers when they flehm.

The cats play with bowling balls, which they chew on and eventually break, and the tigers can "palm" the bowling balls with their opposable thumbs, picking them up with a single paw.

Time Magazine has a recent on-line item on why tigers are not good pets, and features NTS founders Keith and Judy, Paul roaring, and some nice footage of loveable TJ, one four NTS white tigers, at www.time.com/time/video/player/0,32068,1305136850001_2101260,00.html.

Steve works most days NTS is open, so drop in for a Tour at 10am, 1pm, and 3pm, Wednesday – Sunday. Pets are allowed on a leash. ■

Firm News

The Firm is pleased to announce that **Emily J. Kembell** has been elected to serve on the Board for the Foundation for the Springfield Public Schools. Since its inception in 1990, The Foundation has raised more than $12 million to support the Springfield Public Schools.

Emily is a Shareholder in the Estate Planning practice group at CECB. She concentrates her practice in the areas of Estate Planning and Administration; Estate, Gift and Income Taxation; and Probate.

CECB is pleased to report that **Joseph D. "Chip" Sheppard, III** is the 2012 President Elect of the Springfield Metropolitan Bar Association. Chip will begin serving as President in 2013.

Chip is a Shareholder in the Litigation/Dispute Resolution and Transactional groups at CECB and concentrates his practice in the areas of business, real estate, securities and intellectual property dispute resolution and transactions.

The Firm is excited to report that **Rich Maltby** recently served as a featured speaker at the American Conference Institute Construction Litigation Conference in Orlando. Mr. Maltby addressed an audience consisting of in-house counsel and executives at top construction-industry firms, risk managers, and litigators throughout the country concerning the resolution of construction defect claims on both residential and commercial projects.

6 CECB Attorneys Selected for Inclusion on the 2011 Missouri-Kansas Super Lawyers® List

Each year, *Law & Politics Magazine* invites lawyers in each state to nominate top Missouri and Kansas lawyers, they've personally observed in action. Research is then conducted on each candidate dividing them into practice areas. A panel of preeminent peers in each practice area then evaluates each candidate. From the original pool of candidates, only 5 percent of Missouri and Kansas attorneys are selected for inclusion in Super Lawyers. Meet the six CECB Attorneys that were included in the list.

John M. Carnahan III is a shareholder in the Transactional and Estate Planning Practice Groups of Carnahan, Evans, Cantwell & Brown, P.C. He concentrates his practice in the areas of tax planning, corporate transactions, estate planning, and business succession planning for family-owned businesses.

Mr. Carnahan has been awarded an AV Rating by Martindale-Hubbell. Mr. Carnahan has served as author and editor for the Missouri Law Review, The Journal of S Corporations and The Tax Lawyer.

Mr. Carnahan is also a member of the Springfield Metropolitan and American (Member, Sections on: Taxation, Business Law, and Real Property, Probate and Trust Law) Bar Associations, as well as The Missouri Bar (Chairman, Taxation Committee, 1984-1985). He is a Fellow of the American College of Tax Counsel, the American Bar Foundation, the Missouri Bar Foundation, and has been active in Bar Association activities involving continuing legal education. He served as a member of the Board of Curators of the University of Missouri System from 2005 - 2011. Mr. Carnahan has been included on the Missouri Kansas "Super Lawyers" list published by *Law and Politics* magazine since 2006.

William E. Evans is a shareholder in the Transactional Practice Group of Carnahan, Evans, Cantwell & Brown, P.C. He concentrates his practice in the areas of taxation, corporations, real estate, business, and employer/employee law. He has been awarded an AV Rating by Martindale-Hubbell *[highest rating possible].*

Mr. Evans has significant experience in mergers and acquisitions, tax free like-kind exchanges of real estate, and the formation and planning of limited partnerships, limited liability companies, and corporations.

From July of 2003 to July of 2006, Mr. Evans was Legal Advisor to the International Brotherhood of Magicians, a not-for-profit organization consisting of over 12,000 amateur and professional magicians worldwide. Mr. Evans currently is a Member of the Board of Trustees and Chairman of the Grievance Committee.

Mr. Evans is a fellow in the American College of Tax Counsel, an elite group of only 700 tax lawyers in private practice, in law school teaching positions and in government, who are recognized for their excellence in tax practice and for their substantial contributions and commitment to the profession. Mr. Evans has been included on the Missouri Kansas "*Super Lawyers*" list in 2006, 2010 and 2011.

Clifford S. Brown is a member of the Estate Planning Practice Group of Carnahan, Evans, Cantwell & Brown, P.C. He concentrates his practice in the areas of estate planning, probate, and trust litigation, and related tax matters.

Mr. Brown earned his B.S., with honors, in Political Science and his J.D. from the University of Missouri - Columbia School of Law in 1965 and 1968, respectively. He has served as an educator and speaker on behalf of the Supreme Court of the State of Missouri, the Missouri Bar Association, the University of Missouri - Columbia School of Law, and other organizations in providing continuing legal education to members of the legal profession.

Mr. Brown is listed in Who's Who in American Law, as well as The Best Lawyers in America.. Mr. Brown served as the 84th President of the Springfield Metropolitan Bar Association in 2006. In September 2003, he was appointed to the Board of Law Examiners by the Supreme Court. In 1991, Mr. Brown was elected as a Fellow of the American College of Trust and Estate Counsel. Mr. Brown's community involvement includes serving on the Board of Directors of the Burrell Center and the Community Foundation of the Ozarks. Mr. Brown has also been selected to the Missouri Kansas "*Super Lawyers*" list since 2005.

Joseph D. "Chip" Sheppard, III is a shareholder and Chairman of the Litigation/Dispute Resolution Practice Group of Carnahan, Evans, Cantwell & Brown, P.C. He concentrates his practice in the areas of real estate, business, securities and intellectual property litigation, dispute resolution and transactions. A substantial portion of Mr. Sheppard's practice includes securities and other fraud and fiduciary duty related claims, both as an arbitrator and as counsel for the parties. Mr. Sheppard has tried a combined total of more than 50 arbitrations, state and federal trials, both jury and non-jury, in his areas of concentration. Other areas of concentration are various business transactions, acquisitions, real estate development and related litigation and probate litigation.

He is a board member of the Springfield Metropolitan Bar Association, Chairman of the Non-Partisan Court Plan Committee, member of the American Bar Association, the Missouri Bar, the Public Investors Arbitration Bar Association. In 2005 he was elected as a Fellow of the American Bar Association, an honor bestowed upon less than .5 percent of the Bar and was selected in 2005 and 2006 and again in 2010, to the "*Super Lawyers*" list. In 2008, he Co-Chaired the Greene Countians for Fair and Impartial Judges Committee which was responsible for bringing the Missouri Court Plan to Greene County, was a finalist for Missouri Lawyer of the Year and received the Missouri Bar Association and Springfield Metropolitan Bar Association President's Awards in recognition of extraordinary service to those Associations and the legal profession. Finally, he has been named to the "Best Lawyers in America" list by the publication of the same name.

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Missouri-Kansas Super Lawyers - Continued from Page 6

Thomas D. Peebles, Jr is a shareholder and member of the Estate Planning Practice Group of Carnahan, Evans, Cantwell & Brown, P.C. Mr. Peebles has concentrated his practice in estate planning and estate and trust administration matters since 1980.

Mr. Peebles has significant experience in the preparation of basic and sophisticated estate planning documents, and in wealth transfer planning for high net worth clients, closely held business owners and their families. He has been awarded an AV Rating from Martindale-Hubbell in recognition of his preeminent work in assisting his clients in achieving their estate planning goals and objectives. In 2004, Mr. Peebles was elected a Fellow of The American College of Trust and Estate Counsel in recognition of distinguished service in the practice of estate planning, probate and trust law.

Mr. Peebles was honored in 2010 and 2011 by being named to the "Best Lawyers in America" list and has also been named on multiple occasions to the Missouri-Kansas "*Super Lawyers*" list In 2007, Mr. Peebles was elected by his peers as a Fellow in the American Bar Foundation. Membership as a Fellow in the American Bar Foundation is limited to one-third of one percent of the lawyers in America and is in recognition of a lawyer whose professional, public and private career has demonstrated outstanding dedication to the welfare of the community and to the traditions of the profession.

Mr. Peebles has, over the years, devoted a substantial amount of his time towards civic and charitable activities including the Community Foundation of the Ozarks, the Foundation for the Springfield Public Schools and the Springfield-Greene County Library Foundation.

Mr. Peebles was recognized as one of ten "Volunteers of the Year" as part of the 2004 Gift of Time Awards sponsored by the Council of Churches of the Ozarks.

John E. Price is a shareholder in the Litigation Practice Group of Carnahan, Evans, Cantwell & Brown, P.C., concentrating in civil and business litigation, environmental law, corporate and real estate law and appellate practice. Mr. Price has wide experience in environmental law over the last 30 years. He has handled litigation under the Clean Air Act, Clean Water Act, Superfund and toxic torts. He regularly advises clients on environmental regulation, permitting and real estate transactions.

Mr. Price also has much experience with large, complex real estate and business transactions, and with commercial litigation involving leases, contracts and insurance disputes. He has argued over 75 appeals in federal and state appellate courts.

Mr. Price received his B.A. from the University of Northern Iowa, with honors, in 1975 and his J.D. cum laude, in 1979 from the University of Missouri at Columbia (Member Order of the Coif; Note and Comment Editor, Missouri Law Review). Mr. Price has been selected for inclusion on the Missouri Kansas "*SuperLawyers*" list since 2007 and has an AV Rating by Martindale-Hubbell. ■

Missouri Department of Revenue Asserts LLC Members are Liable for Unpaid Entity Level Tax

By Frank C. Carnahan

Limited liability company ("LLC") members are generally NOT liable for LLC obligations and liabilities unless they guaranty them or there is another provision, as set out in R.S.Mo. §347.057:

> A person who is a member, manager, or both of a limited liability company is not liable, solely by reason of being a member or manager, or both, under a judgment, decree, or order of court, or in any other manner, for a debt, obligation or liability of the limited liability company, whether arising in contract, tort of otherwise or for the acts or omissions of any other member, manager, agent or employee of the limited liability company.

The IRS respects this liability limitation. Members are not personally liability for unpaid withholding tax unless they are determined to be a "responsible person" under Internal Revenue Code §6672, with a duty to collect and pay over taxes, and who "willfully" fail to do so. Missouri has similar statutory responsible person liability for sales and withholding tax, but not for unemployment contributions.

The Missouri Department of Revenue ("DOR") and Missouri Division of Employment Security ("Division") position is that members of LLCs taxed as partnerships are personally/individually liable for unpaid LLC taxes, i.e., DOR withholding and sales tax, and Division unemployment contributions, without resorting to responsible person personal liability. DOR's and the Divisions positions are that limited liability is trumped by R.S.Mo. § 347.187:

> 1. A limited liability company created pursuant to sections 347.010 to 347.187 or entering the state pursuant to sections 347.010 to 347.187 and its authorized persons, or their equivalent, shall have the duty to withhold and pay such taxes as are imposed by the laws of this state or any political subdivision thereof on a basis consistent with such limited liability company's classification pursuant to Section 7701 of the Internal Revenue Code of 1986, as amended.
>
> 2. Solely for the purposes of chapter 143, R.S.Mo., chapter 144, RSMo, and chapter 288, RSMo, a limited liability company and its members shall be classified and treated on a basis consistent with the limited liability company's classification for federal income tax purposes.

Thus, if an LLC is taxed as a partnership (versus taxed as a corporation) LLC members are treated as general partners liable for tax owed by the LLC itself. DOR appears to accept that an LLC member treated as a limited partner (versus general partner) is not liable. Limited partnership general partners manage and control the limited partnership business and affairs, and limited partners do not have that authority, so cannot make sure the taxes are paid. All members in a member managed LLC can act for the LLC, similar to general partners, but non-manager members in a manager managed LLC are without authority, similar to a limited partner. Management authority is set out in the Articles of Organization as "member managed" or "manager managed". The extent and limits on manager authority is further set out in the LLC Operating Agreement. Also, there are two checkboxes on the LLC form K-1 sent to members each year with the LLC filing the form 1065, marked that the member is either a "general partner – LLC member" or "limited partner – LLC member". ■

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