THE BARTON AND THE BA

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HON. ROBERT KUGLER TO RECEIVE 2024 GERRY AWARD OCTOBER 29TH

The Honorable **Robert B. Kugler** (*Ret.*) has been named the 2024 recipient of the prestigious Judge John F. Gerry Award. The award will be presented at the 26th annual Gerry Award Reception on Tuesday, October 29th at

The Westin in Mt. Laurel. The event features a three-hour upscale cocktail party with hors d'oeuvres and plentiful food stations. Judge Kugler will receive his award during a brief formal program, at which time the 2024 Judge John F. Gerry Memorial Scholarship will also be presented.

The Judge John F. Gerry Award was established in his honor by the Camden County Bar Foundation in 1996 to acknowledge the spirit and humanitarianism with which he practiced as a lawyer and judge. It is awarded annually to a member of the Bar of the State of New Jersey, or a member of the State or Federal Judiciary in New Jersey, who exemplifies the character and humanitarianism of Judge Gerry and in recognition of outstanding contributions to the administration of justice.

Born in Camden, New Jersey, Judge Robert B. Kugler graduated Summa Cum Laude in 1975 with a BA from Syracuse University. In 1978, he graduated from Rutgers Law School with honors. After serving a judicial clerkship for the Honorable John F. Gerry, USDJ, he served from 1979 to 1982 as an Assistant County Prosecutor. From 1982 to 1983 he was a Deputy Attorney General in the New Jersey Division of Criminal Justice. He also spent ten years in private practice as a partner in a Moorestown, New Jersey law firm. He was a certified civil and criminal trial attorney in New Jersey and was appointed as a member and chair of the District IIIB Attorney Ethics Committee by New Jersey Chief Justice Robert Wilentz.

In 1992, he was appointed as a United States Magistrate Judge for the District of New Jersey where he served until his nomination by President George W. Bush and confirmation by the United States Senate in 2002 as a United States District Judge.

Judge Kugler was also appointed by United States Chief Justice William Rehnquist as a member and ultimately chair of the U.S. Judicial Conference Committee on the Administrative Office of the Courts.

In addition, in 2017, United States Chief Justice John Roberts appointed Judge Kugler to a seven-year term on the United States Foreign Intelligence Surveillance Court where he served until 2024.

He is admitted to the bars of the New Jersey Supreme Court, the United States District Court for the District of New Jersey, the United States Court of Appeals for the Third Circuit and the United States Supreme Court. Since retirement from the bench on May 31, 2024, he has been associated with JAMS as a neutral mediator and arbitrator.

Judge Kugler was awarded the Honorable Peter J. Devine award by the Camden County Bar Association and the Arthur E. Armitage distinguished alumnus award by Rutgers Law School. He is most proud of his family, including wife Theresa, son, Douglas, Jen, their two daughters, Sara and Rachel, and his daughter Emmalee.

The Judge John F. Gerry Memorial Scholarship Award, established in 2002, will also be presented at the dinner. The award is available to students enrolled at any New Jersey law school. Scholarship recipients must have demonstrated academic achievement and genuine financial need, coupled with a verifiable history of and/or a desire to practice in the public service sector.

Tax deductible donations to support the Gerry Memorial Scholarship may be sent to the Camden County Bar Foundation, 1939 Marlton Pike East, Suite 120, Cherry Hill, NJ 08003.

Tickets for the Award Presentation are \$100, with a portion of the ticket price going to the Gerry Scholarship Fund. To make reservations for the Gerry Award presentation, use the Gerry Award flyer included with this issue, or reserve and pay online at www.camdencountybar.org. Reservations must be received by October 22.

FALL EDOLLG IS DACK!

FALL FROLIC IS BACK!

Join the CCBF for the annual **Fall Frolic** at **Kaminski's Bar & Grill in Cherry Hill** for a fantastic evening of networking and fundraising. Watch the 76ers take on the NY Knicks in Kaminski's newly renovated patio room and enjoy cocktails and delicious food, while raising money for a great cause—the **Children's Holiday Party scheduled for December 7**. Sponsorships are also available for this special event. Refer to the fliers in this month's issue, or register on our website today! **We hope to see you there.**

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NOMINATIONS SOUGHT FOR DEVINE AWARD

The Hon. Peter J. Devine, Jr. Award Committee is accepting nominations for this year's award. The Devine Award is the highest honor afforded to the membership and is bestowed upon a member for distinguished service to the Camden County Bar Association. The Committee is chaired by Past President and past Devine Award recipient Louis R. Moffa, Jr. Please use the Devine Award Nomination Form included in this month's Barrister inserts to nominate a colleague who has provided distinguished service to the Association and the legal community in Camden County. Nominations must be received by November 15 to be considered.

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THE DOCKET OCT 2024

Wednesday, October 9th

Young Lawyers Committee Meeting 6 p.m.-Bar Headquarters, Cherry Hill

Thursday, October 10th

Family Law Happy Hour 5 p.m.-Taproom & Grill, Haddon Twp.

Tuesday, October 15th

Residential Real Estate Primer 4 p.m.-Via Zoom

Wednesday, October 16th

CCBA Member Appreciation Breakfast 9 a.m.-WSFS Bank, Cherry Hill

CCBA Board of Trustees Meeting 4:30 p.m.—Bar Headquarters/Via Zoom

Thursday, October 17th

Sandwich Making Event 6:30 p.m.-Bar Headquarters

Wednesday, October 23rd

Election Transparency Act 4 p.m.-Via Zoom

Tuesday, October 29th

Gerry Award Dinner 6 p.m.-The Westin, Mt. Laurel

Wednesday, October 30th

Professionalism Day Seminar 2 p.m.-Hall of Justice, Camden

Tentative Agenda for October 16 Board Meeting

A tentative agenda for this month's regular Board of Trustees meeting follows. The meeting will begin at 4:30 p.m. at Bar Headquarters and via Zoom. All meetings are open to the membership. Anyone interested in attending should notify and confirm their attendance by calling Bar Headquarters at 856.482.0620.

- I. Call to Order
- II. Approval of Minutes from Meeting
- III. Treasurer's Report
- IV. President's Report
- V. Executive Director's Report
- VI. Committee Reports
 - a. Membership Committee
 - b. Young Lawyers Committee
 - c. Standing Committee Reports
- VII. Foundation Update
- VIII. NJSBA Update
- Old Business (if any)
- New Business (if any)
- XI. Adjournment

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GOT NEWS?

Do you have news you want to share with the CCBA membership? Submit your newsworthy items for publication in The Barrister to Kara Graser at kara@camdencountybar.org! We are happy to publish news of board appointments, participation in charitable organizations, awards and honors, joining a new firm, and more! We want to hear from you and help celebrate our members' accomplishments.

Send your news today!

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PRESIDENT'S PERSPECTIVE

By Matt Rooney



I can't speak for any of you, but I routinely experience the unnerving sensation of rapid time acceleration this time of year. And no, fellow '80s and '90s kids, I don't own a DeLorean! I'm not holding out on you. I promise.

The lazy, hazy days of August are a distant memory. Leaves are rapidly falling and it won't be long before the holiday chaos descends upon us; several of the

big box stores are already stocking illuminated reindeer and Christmas trees. The professional sports calendar is crowded, political candidate ad volume is intensifying, and your children's extracurricular engagements are... bonkers. Clients want everything done before the end of the year (even the stuff that definitely doesn't need to be) and the judge wants a report from the parties on their progress, yesterday. Time - in terms of quality and quantity - feels stretched and in short supply.

Before you get swept up in the craziness of 2024's final months, it's all the more important to take a brief time out to reconnect with your friends and colleagues at the Camden County Bar Association.

An easy option: join us on October 16th between 9 AM and 11 AM at WSFS Bank's location in Cherry Hill (1901 Route 70) for our first Membership Appreciation Breakfast.

You don't need to hang out for long. Grab a free bagel and cup of coffee on your way to work or that thrice-rescheduled deposition! Find out about some of our upcoming events. Thank our partner in progress WSFS for supporting our organization. Remind yourself that you're part of something bigger and more constant than the changing seasons. More than ever before, we want you to know that we appreciate you and everything you contribute to our South Jersey legal community especially in these busy, dizzy autumnal times. See you on October 16th! I'll save that last croissant for you.

CCBF & HOPEWORKS PARTNER FOR SPECIAL EVENT NOVEMBER 11TH

The Camden County Bar Foundation is excited to announce a mock interview event in partnership with **Hopeworks** on **November 11, 2024**. The event will take place from approximately **9:30 am – 11:30 am**.

Hopeworks is a non-profit organization formed in 1999 which focuses on career training for young adults. Located at **808 Market Street** in Camden, they provide skills training for high-demand jobs in the technology field, have a paid internship structure, and place students in full-time jobs after they complete their internship. Their statistics are impressive – there is a 91% 12-month retention rate in their jobs. Hopeworks also provides wrap-around support such as a GED program, housing assistance, food, one-on-one coaching for the participants of the program, and access to professional clothing.

The Foundation is looking for approximately 15-20 volunteers to conduct mock interviews with the Hopeworks students. Goals for the mock interviews include helping trainees develop interview strategies and learn how to answer difficult questions. Volunteers will receive guidelines and sample questions for the mock interviews. If you would like to participate in this fantastic initiative, please reach out to <code>Jessica O'Hearn</code> at <code>johearn2@verizon.net</code> or <code>Tess Berkowitz</code> at <code>tessberkowitzesq@gmail.com</code>.

If you are unable to volunteer, you can still help! We are seeking sponsors to provide lunch for the Hopeworks students while we are hard at work preparing for their futures! Please let us know how you would like to be involved in this awesome event.



FOUNDATION UPDATE



Busy September at the Bar: Fundraising Success, Honoring Judge Kugler, and Exciting Events Ahead!

By Rachael B. Brekke

As promised, September was busy at the Bar! Thanks to the Young Lawyers, the Eagles Watch Party was a great success and raised critical funds to support the Larc School and our Foundation couldn't

be more proud. Maybe next year the Eagles will play better so we can celebrate victories all around! Until then, we will continue to lead by example and bring our A game in all of our fundraising efforts in the year ahead.

The Foundation also participated in the 3rd Annual Camden County Prosecutor's Office Unity Day and provided resources to the community at Cooper River Park. We were so proud to share our scholarship information and lawyer referral services on a beautiful Saturday in September.

The Gerry Awards Committee is pleased to announce their selection of the 2024 Judge John F. Gerry Award – Hon. Robert B. Kugler (Ret.). This year's award dinner and scholarship presentation will take place on Tuesday, October 29, 2024 at 6pm at the Westin in Mt. Laurel. Join us for this very special event as we honor and pay tribute to Judge Kugler for his

humanitarianism and outstanding contributions to the administration of justice in New Jersey. This is a wonderful event filled with members who support each other and their outstanding contributions to the Bar.

On November 11th we will be volunteering and conducting mock interview with the students at Hopeworks who look forward to achieving their first dream job. Look out for sign ups to volunteer and always feel free to reach out to me directly if you would like to volunteer more in Camden County. Our Foundation's core values are centered around supporting our community, including helping those who need and deserve our support. We are committed to giving back to Camden County with you in the year ahead!

The Fall Frolic is officially re-imagined and scheduled on November 12th in the new, private room at Kaminski's in Cherry Hill. The food will be GREAT, drinks will be plenty, and company will be festive. Don't miss out on this opportunity to see your colleagues before the holiday chaos begins and help the Foundation raise money to buy holiday gifts for the children who need it most.



Join colleagues and friends from the Bench and Bar to recognize and pay tribute to Judge Kugler for his humanitarianism and outstanding contributions to the administration of justice in New Jersey.



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VERDICTS IN THE COURT

July 2024

SUPERIOR COURT OF NEW JERSEY

VERDICT: No Cause (7/17/2024) Case Type: Donald J. Stein, J.S.C. Judge: Plaintiff's Atty: Gary Brownstein, Esq.

Defendant's Atty: Margaret Wessner, Esq. L-1601-22

VERDICT: No Cause (7/3/2024) Medical Malpractice Michael J. Kassel, J.S.C. Case Type: Judge:

Plaintiff's Atty: Defendant's Atty: DF1 Jay Blumberg, Esq. DF2 Erika Mohr, Esq. DF3 Dominic DeLaurentis, Esq.

L-3778-21

Total Damages Verdict: \$30,000 to Plaintiff (7/30/2024) **VERDICT:**

Case Type:

Donald J. Stein, J.S.C. Judge: Plaintiff's Atty: Michael Dennin, Esq. Defendant's Atty: Anthony Young, Esq.

L-3419-20

VERDICT: No Cause (7/31/2024) Product Liability Case Type:

Juditch S. Charny, J.S.C. Michael Misher, Esq./Scott Zlotnick, Esq. Judge: Plaintiff's Atty:

Defendant's Atty: Kevin McKeon, Esq.

L-407-22

VERDICTS IN THE COURT

August 2024

SUPERIOR COURT OF NEW JERSEY

No Cause (8/14/2024) **VERDICT:**

Auto Negligence - Personal Injury Michael J. Kassel, J.S.C. Case Type: Judge

Plaintiff's Atty: John D. Borbi, Esq. Defendant's Atty: John H. Law III, Esq

L-2448-22 Jury

VERDICT: 100% Liability Verdict (Defendant: Marina Capitera) - 100% Liability Verdict (Defendant: Mari 100% Liability Verdict (Defendant: Marina Cabrera) - Total Damages

Judge: Plaintiff's Atty: Plaintiff's Atty: Jamie L. Barron, Esq.

Output

Steven J. Polansky, P.J.Cv.
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L-3274-22

EAGLES WATCH PARTY BENEFITING LARC SCHOOL

It was a great day of friendship, fundraising and football at the reimagined CCBF Larc School fundraiser on September 29 at PJ Whelihan's in Cherry Hill. Guests enjoyed game day favorites such as wings, nachos, mozzarella sticks, french fries, and cold beer as they watched the Philadelphia Eagles take on the Tampa Bay Buccaneers. Even the Eagles loss couldn't dampen the spirits of the attendees as they donned their fan gear and helped raise money for the incredible Larc School which serves children with moderate to severe disabilities. Best of all, the Foundation raised nearly \$5,000 for the Larc School! As the pictures show, a wonderful time was had by all!

























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JUDGES AND LAW CLERKS ADJOURN TO THEIR PARTY CHAMBERS

It was a packed house at the nearly sold-out annual Meet the Judges and Law Clerks event on September 30 at the Camden County Boathouse in Pennsauken. Judges of the Superior Court, Federal Court, Workers' Compensation Court and Municipal Court, and their law clerks, mingled with Bar members as the crowd enjoyed wine and beer, delicious passed

hors d'oeuvres and bountiful food stations. We are so grateful for the support of our incredible judiciary to help make this year's Meet the Judges a resounding success. Below are some pictures of the guests enjoying their evening.



Magistrate Judge Sharon King and Neeraja Aravindin



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Judge Karen Williams and Matthew Wieliczko



Judge Frank Testa, Claudia Eiden, Christopher Zubrycki and Assignment Judge Deborah Silverman Katz



Judge Adam Greenberg and Allen Etish



Judge Mark Chase, Sarah Plasse, Erin Deitz and Robert Maxwell



Mark Kancher and Alan Polansky



Post-Settlement Options for Minor or Incapacitated Persons

by Thomas D. Begley, Jr., Esquire, CELA

Essentially, there are four options with respect to the treatment of settlement funds obtained on behalf of a minor or incapacitated person

- > Deposit with Court. Funds could be deposited with the court. There are virtually no advantages to this option, but several disadvantages. The disadvantages include:
 - Generally, each time money is to be withdrawn, an application must be made to the court for approval. Courts frequently deny these applications if the beneficiary is a minor
 - Funds are usually invested in low-yielding Certificates of Deposit.
 - At age 18, or the state age of majority, a minor can withdraw the funds and squander them as the minor sees fit.

In some states, such as Pennsylvania, where there is a minor or incapacitated person, the Rules of Civil Procedure¹ require a corporate fiduciary if the net settlement to the plaintiff is \$25,000 or more.

> Special Needs Trust. The funds could be deposited into a Self-Settled Special Needs Trust (SSSNT). The funds in the trust are not counted in determining eligibility for means-tested public benefits such as SSI and Medicaid, and these important public benefits can be preserved. The primary disadvantages are:

- · Medicaid Payback. There is a payback provision to Medicaid on the death of the trust beneficiary. While this may sound harsh, it is usually better than the alternative. The alternative is to "pay as you go" for medical services. Payment is made at full list price rather than the deeply discounted arrangement paid by Medicaid. "Pay as you go" means paying now rather than later. Payment is also made now rather than later. If payment is deferred, those monies can be used for investments and for the basic needs of the trust beneficiary. The beneficiary can take advantage of the time value of money. If there is no money left in the trust on the death of the beneficiary, no payback is required. If there is extra money left in the trust on the death of the beneficiary after payment to Medicaid, the excess funds can be left to the heirs of the trust beneficiary. There is no payback requirement for SSI.
- <u>Sole Benefit Rule</u>. Under the rules of SSI, funds in an SSSNT are restricted for primary use of the trust beneficiary. Under New Jersey Medicaid, the funds in an SSSNT are restricted for the sole benefit of the trust beneficiary. This means that if other family members benefit from trust distributions for things like home improvements, they must pay a pro rata share. For example, if the trust owns a home and it is occupied by three healthy people and the disabled trust beneficiary, the three healthy people must pay 75 percent of the expenses of operating and maintaining the home.

Continued on Page 10

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Post-Settlement Options For Minor or Incapacitated Persons

 $Continued \, from \, Page \, 9$

If a court is going to supervise the trust, which is often the case in Pennsylvania and sometimes the case in New Jersey, the court will usually insist on the funds being used for the sole benefit of the person with disabilities whether or not an SNT is utilized.

- Payment to Third Parties. An SNT cannot distribute money to the trust beneficiary. Any such distribution would be considered income causing the beneficiary to lose SSI and Medicaid. The practice is for the trustee to make direct payments to the third parties providing goods and services to the beneficiary. For example, rather than give the trust beneficiary money to pay cell phone charges each month, the trustee pays the cell phone bill directly to the provider. Remember, that there can be a reduction in an SSI grant for distributions for shelter In-Kind Support and Maintenance (ISM). Alternatively, the trustee will usually provide a credit card or debit card to the trust beneficiary or family member of the trust beneficiary. Receipts must be furnished monthly to the trustee.
- > Settlement Protection Trust. A Settlement Protection Trust (SPT) is somewhat more flexible than an SNT. The disadvantage is that if the trust beneficiary is receiving meanstested public benefits, the assets in the SPT would be considered countable resources and cause a loss of those benefits. Remember, however, Medicaid programs in most states do not count resources for children under the Child Health Insurance Program (CHIP). The advantage is that the administration of the trust may be somewhat more flexible.
 - Payback. There is no Medicaid payback in cases involving an SPT.
 - Sole Benefit Rule. Unless there is court supervision, which is often the case in Pennsylvania, if the beneficiary is a minor or incapacitated person and which is sometimes the case in New Jersey, then distributions must be made for the sole benefit of that minor or incapacitated person. However, if there is no court supervision, trustees can be somewhat more flexible in incidentally benefiting other family members. Trustees do need to make sure they do not breach their fiduciary duty to the primary beneficiary.
 - Payment to Third Party Providers. Under an SPT, direct payment to third-party providers is not required. The trust could send the trust beneficiary or the parents or guardian of the trust beneficiary monies each month to be spent on behalf of the beneficiary in accordance with a budget previously agreed upon by the trustee and the family.
- > Settlement Protection Trust with Special Needs Provisions. There are cases where a beneficiary may not be receiving means-tested public benefits at the time of settlement but may be eligible for them in the future. For example, as long as a child is under 18, he is normally not eligible for SSI and Medicaid, because the parents' income and assets are deemed to the child. However, upon attaining age 18, the deeming stops and the child may be eligible for those benefits. In other cases, the child has a medical condition such as a bad heart but may not be disabled at the time of settlement, in accordance with the definition of disability contained in the Social Security Act (SSA). However, as time goes on the child's condition may decline and the child may meet the SSA disability standard and an SNT may be required to obtain and maintain SSI and particularly, Medicaid. The solution in these situations is to establish an SPT, which has the advantages outlined above with a provision that the trustee has the right to transfer the funds in the Settlement Protection Subtrust to a Special Needs Subtrust in the trustee's discretion. The advantage is much greater flexibility. The disadvantages of the SNT are deferred until it is determined that the SNT is definitely going to be necessary. Many states have Katie Beckett Medicaid waiver programs where parental deeming does not apply.

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Don't Miss Out on Your Membership Benefits!

As a reminder, under the Association's dues policy, any member whose dues remain unpaid as of September 1 will lose access to all membership benefits. This means unpaid members won't be able to attend members-only events, will have to pay non-member tuition rates for Association-sponsored CLE seminars and events, and won't be eligible to serve on committees. Plus, you'll miss out on the discounts and services offered by our Association Partners in Progress. But don't worry-once your dues are paid in full, all benefits will be restored.

Paying your dues on time not only keeps your membership active. but it also supports the Association in continuing to offer its valuable programs and services to you and the community. Our easy-to-use member portal allows you to securely pay online, and you can even opt-in for automatic annual renewals to ensure you never miss out on your benefits.

Consider all the great perks of membership: discounted tuition for informative seminars (including New Jersey and Pennsylvania CLE credit), the monthly publication The Barrister, opportunities to shape the future of your Association through committees, exclusive professional and social networking events, and discounts on legal products and services, just to name a few.

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How to Structure a Taxpayer Friendly M&A Deal

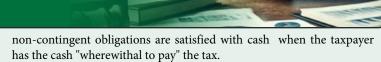
by Martin H. Abo, CPA/ABV/CVA/CFF

By M&A we are not necessarily referring to a "Marty Abo deal". Still, we at Abo and Company and Abo Cipolla Financial Forensics have noted that taxpayers selling their businesses typically have three common tax planning objectives when structuring

the transaction.

First, when taxable cash proceeds are received in the deal, sellers prefer to pay lower capital gain tax rates as opposed to higher ordinary income tax rates. Second, when rollover equity is received, that is, where the seller reinvests a portion of the sales proceeds into the newly acquired business, sellers prefer to defer being taxed on the rollover investment until that equity is disposed of at a future date. Finally, sellers prefer to defer income recognition on contingent obligation payouts or deferred consideration on installment notes, and to characterize the income when the cash is received primarily as capital gains, taxed at the lower, more preferential income tax rates.

A common thread that will become very apparent is that tax law is designed to follow the "wherewithal to pay" principle. This principle essentially stands for the proposition that all taxpayers should be allowed to defer the recognition of income or gain until any deferred consideration is converted into cash down the road, i.e., until a taxpayer sells the rollover stock for cash or until the outstanding contingent and



Tip: We and other tax pros generally try to avoid structuring deals where a client must pay tax on income when they haven't yet received the cash to pay the tax.

Ways to Acquire-Classifying Types of Reorganizations

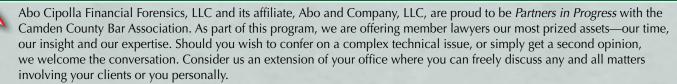
When an existing corporation (buyer) wants to acquire a business (target) corporation, we've seen several options considered:

- (1.) The buyer can directly purchase the target's business assets in exchange for cash, or a combination of cash and other property.
- (2.) The buyer can purchase the target's stock directly from its shareholders for cash, or a combination of cash and property. Here, the buyer may want to consider joining with the seller in making an IRC Sec. 338 election treating the stock purchase as an asset purchase for tax purposes. This is advantageous for the buyer, because it often provides for a "step-up" in the tax basis of the underlying assets, which allows for larger depreciation deductions.

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(3.) The buyer can use a tax-free reorganization to acquire the target [IRC Sec. 368(a)(1)].

What the Seller Wants vs. What the Buyer Wants

What the Seller Wants. We've found the target seller typically wants to minimize the gain recognized on the sale of stock or assets and wants the lowest tax rate possible to apply, generally capital gains rate treatment. The seller wants to be insulated from business liabilities after the sale, and when seller financing is involved, the target and/or its shareholders wants to collect on the installment note receivable.

If the target seller is a C Corp., then there is a strong preference to sell stock rather than assets because of:

- 1.) Any built-in gain, i.e., Fair Market Value (FMV) over tax basis, of the business assets are avoided. Those assets will only be taxed to the buyer down the road if those assets are eventually sold post-acquisition. If the sale proceeds are then distributed to the shareholders, it will be taxed once again to the shareholders resulting in double taxation.
- (2.) If the target stock was held for over a year, the seller's gain is almost always long-term capital gain taxed at preferential rates (20% maximum) before considering the applicability of the net investment income tax and state income taxes where applicable.
- (3.) If the stock is Qualified Small Business Stock (QSBS), the seller's gain may be eligible for partial or full gain exclusion. Depending on when the QSBS was acquired, this provision allows stockholders to claim up to a minimum of a \$10 million federal income tax gain exclusion for gains on the sale of the stock held more than five years when certain business and shareholder requirements are met.

(4.) Actual and contingent liabilities associated with the company remain with the stock. Existing liabilities that buyers are aware of typically reduce the selling price of the stock, while selling or redeeming stock rather than selling assets protects the business owner or seller(s) from unasserted or unrecorded liabilities that may exist at the time of sale.

What the Buyer Wants. We've also found that the buyer typically wants sufficient cash flow from the acquired business to provide a good return on investment, to minimize income tax on business operations, and to reduce liability exposure. Buyers generally prefer to purchase assets (via an asset purchase agreement) as opposed to stock (via a stock purchase agreement requiring a deemed asset sale election be made), because actual asset purchases usually protect the buyer from being responsible for most unknown or contingent liabilities.

When the buyer acquires appreciated assets, its basis is generally "stepped-up" to fair market value. This allows the buyer to take advantage of larger depreciation and amortization deductions. Beyond this general article but note that there are means for the buyer to be considered to have acquired assets in a stock purchase arrangement by agreeing to make a joint election with the seller for qualifying acquisitions.

Note: While the interests of the buyer and seller are at odds depending on the transaction structure chosen, the desire to complete the transaction will usually provide enough motivation for both parties to reach agreement by "grossing up" one of the parties to the transaction, (i.e., through purchase price adjustments) that satisfies everyone.

Differences Between a Tax-free Stock Sale and a Taxable Stock Sale

Asset acquisitions are more common when the business entity is an S corporation, Partnership, a multi-member Limited Liability Company

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(LLC) treated as a Partnership for income tax purposes, or a single member LLC treated as a sole proprietorship for income tax purposes. Whereas C corporations typically avoid asset sales because double taxation on the transaction can be cost prohibitive. If the seller is a C corporation, or an S corporation with built-in gains, selling assets will result in double taxation, initially at the entity level when the assets are sold and then again at the shareholder level when the proceeds are distributed. A taxable asset sale can be advantageous for the buyer without materially impacting the Target seller if the seller has unrestricted net operating loss, capital loss or business tax carryovers that could be used to offset the gain and any related income tax on the transaction.

In a tax-free asset acquisition, the selling shareholders do not recognize gain except for allowable "boot" received in the transaction. Assets generally come over to the buyer at carryover tax basis, and all of the tax attributes of the Target (seller's) company are retained by the buyer, subject to possible limitations on their use.

Note: Disposing of stock may subject the seller to the 3.8% net investment income tax.

Taxation of Fixed Deferred Installment Payments

It's fairly common for the proceeds of an acquisition deal to be paid out over time to the seller or target company in an installment agreement rather than in one lump sum.

The installment method of accounting permits taxpayers to defer the recognition of gain on the disposition of most capital assets. Thus, under the installment method, gain on an installment sale is spread over the period during which the installment payments are received, rather than being subject to tax all at once in the year of sale. In an actual or deemed asset sale transaction, all gains and losses must be separately computed. The installment method applies only to gains on sales of capital assets, and not to losses, which is favorable because losses can be taken in the year incurred, while gains can be deferred and recognized ratably over the installment agreement.

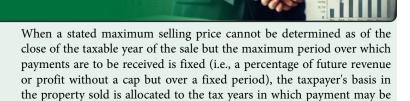
Note: If there is a qualifying installment sale of property, the installment method automatically applies unless the seller elects out of the installment method.

At closing, the seller may receive either a fixed amount (i.e., note with fixed payment terms) or a contingent payment based on future income targets or based on a milestone such as FDA approval for a pharmaceutical company, or some other industry specific metric laid out as a target in the acquisition agreement.

Special rules apply in determining gain recognition for each year a contingent payment sale is outstanding. The Regs outline how taxpayers should allocate the seller's tax basis to the payments received each year.

These rules apply in three possible situations; when there is a fixed maximum selling price; where the maximum selling price is not fixed and not determinable, but where the time frame over which payments can be received is determinable; and where neither a maximum selling price nor a definite payment term is determinable.

If a contingent payment sale has a maximum stated selling price (i.e., percentage of future earnings not to exceed a predetermined cap), the seller's gain on the sale is determined by treating the stated maximum selling price as the selling price, and the seller's basis is recovered ratably in relation to the amount of each payment received in relation to the maximum amount to be received.



If the sales agreement neither specifies a maximum selling price nor limits the period over which payments are to be made, the basis of the property sold is recovered in equal annual increments over 15 years commencing with the year of sale.

received under the agreement in equal annual increments.

Gain from a sale or other disposition of property equals the excess of the amount realized over the adjusted basis of the property sold. The amount realized is defined as the "sum of any money received plus the fair market value of the property (other than money) received."

If the amount received in future years is less than what was estimated, it may cause a capital loss when excess tax basis exists. If the amount received in future years is greater than expected, then any excess is treated as an additional capital gain in the later year. If a taxpayer wishes to elect out of the installment method, the full gain should be recognized in the year of the sale and reflected in the appropriate places on the return.

While the original issue discount regulations provide no guidance on how contingent payment sales should be reported under the installment method, each payment is generally discounted by an imputed interest amount. Each payment should have a small interest component (subject to ordinary income tax rates to the seller and resulting in an ordinary interest expense deduction to the buyer) and the balance will be considered a principal component (generally taxed at long-term capital gain tax rates to the seller and becoming part of the purchase price allocation to the buyer).

Conclusion

Understanding how to structure a business entity purchase or acquisition is important to attorneys and us accountants so we all can best serve our clients and help them make continuity or legacy planning business decisions.

Martin H. Abo, CPA/ABV/CVA/CFF is a principle of Abo and Company, LLC and its affiliate, Abo Cipolla Financial Forensics, LLC, Certified Public Accountants – Litigation and Forensic Accountants. The firm is a Partner in Progress of the Camden County Bar Association. With offices in Mount Laurel, NJ, Morrisville, PA and Franklin Lakes, NJ. Marty can be reached at marty@aboandcompany.com or by calling 856-222-4723 ext. 104.

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By Iim Hamilton

Perhaps the reason we feel that time has flown by planted before the new regulation went into effect so quickly as we approach the end of the year is because our calendar subtly promotes this feeling. Shouldn't September through December be months seven through ten, and not two months further advanced than they are? Perhaps those vacations during months named after Julius and Augustus Caesar helped contribute to this feeling, but whatever the reason, we simply must cope with this calendar crunch. One way to slow down the pace of time may be to sit back and enjoy a glass of wine, so let's explore an option worth considering as another Chardonnay alternative.

As you know from last month's exploration of the white Pinot Gris grape, it is a mutation of the red Pinot Noir that has a darker skin color and produces a more off-white juice than many other white grapes. It is not, however, the only varietal that evolved from Pinot Noir. Pinot Blanc is a derivative that is said to have been discovered in the 16th century, and as you might expect from its name, is lighter skinned and produces wines that are more limpid in color than its Gris cousin. The physical appearance of the grape clusters, however, served to promote confusion, since its early plantings in France's Alsace region often were misidentified. Among the grape varieties for which it was mistaken include Chardonnay, Chenin Blanc, and Melon de Bourgogne, the grape of Muscadet. Over the passage of time and with advances in science, most of the confusion was resolved, although its standing in the wine world has been a bit wobbly.

One key attribute that encourages planting Pinot Blanc is its resistance to cold weather, thereby making it a viable option for regions where temperatures can drop to levels potentially damaging to other varietals. It tends to produce smaller berries, which offers the prospect of achieving greater concentration of flavor if crop yields are managed properly. Unfortunately for its reputation, however, it is a vigorous grower and wineries that want to achieve production volume do so at the expense of character and quality. This, of course, is a practice that is not limited to Pinot Blanc, but in the case of this varietal it historically has been a common approach. This has created the often-justifiable impression that it makes very ordinary and often insipid wines. Furthermore, it probably did not help its reputation when those who make the rules governing France's wine regions decided that although Pinot Blanc long had been one of the seven grapes permitted to be used to make Champagne, only grapes from vineyards

could continue to be used, and no new plantings were allowed. Were he a wine fan, Rodney Dangerfield undoubtedly would have adjusted his tie and lamented this lack of respect.

However, in recent years, conscientious growers and vintners in Alsace and other wine regions have begun working with the grape, helping to elevate its standing as a wine worthy of greater attention. Winemakers in Alsace, northern Italy, Austria, Germany, Eastern Europe, and elsewhere have been successfully cultivating or accessing Pinot Blanc vineyards that through care and lower yields are capable of producing wines of distinction. While factors such as climate, altitude, soil type, oak usage (and often the lack thereof), vineyard management, clonal selection and more make broad accounts of what wines made from the grape will taste like, there are some common descriptions that may help guide expectations. There can be stone fruit impressions such as peaches, apricots, or nectarines; sensations of orchard fruit, particularly pears and apples; touches of citrus may lurk; and impressions of white flowers and nuts, particularly almonds, may be detected. The wines tend to possess good acidity, with the more northern regions often producing more high toned. When oak is employed to ferment and/or age the wines before bottling, the wine can exhibit more texture and a broader, creamier feel.

Although the ability to use Pinot Blanc in the sparkling wines of Champagne has been curtailed, it has become an important grape in the increasingly popular sparkling wines of France's Alsace region. The Dopff family began producing sparkling wines using this grape in 1900, but it took time for other wineries to follow their lead. Indeed, it wasn't until 1976 that what is called Crémant d'Alsace reached a level warranting the French regulatory agency to afford it its own AOC (initials we can appreciate, but here the Appellation d'Origine Contrôlèe). Along with Italy's Prosecco and Spain's Cava, fans of bargain bubbly can look to Alsace to tickle their palate without breaking their budget. As these wines became more popular, a sub-category of sparkling wines called "Emotion" was created in 2012 by a syndicate of over 500 Alsatian crémant producers. Stricter rules apply to promote even higher quality, and while some producers rely more on Chardonnay than for their regular crémant, Pinot Blanc still plays an important role.

One winery helping to meet the demand for Crémant d'Alsace, is Lucien Albrecht, which



devotes a considerable part of its production to such wines. Other Alsatian crémant producers meriting consideration include Marcel.Deiss, Meyer-Fonne, Barmes-Buecher, Dirler-Cadé, Bott-Geyl, Mittnacht Frères, Jean-Baptiste Adam, and Pierre Frick.

Pinot Blanc, however, is much more than simply an important grape when making Alsatian sparkling wines, as many of the top wineries in the region offer excellent examples of still wines made from the grape. Perhaps as another varietal slight, unlike Pinot Gris, Pinot Blanc vineyards cannot qualify for Grand Cru status. However, in the hands of talented and dedicated winemakers, fine and often affordable wines can be made. Star producers like Zind-Humbrecht, Domaine Weinbach, and Albert Boxler include Pinot Blancs in their portfolio, as do the large and very popular wineries of Hugel and Trimbach. Other producers to look for include Albert Mann, Barmes-Buecher, Paul Blanck, Agathe Bursin, Kuentz-Bas, Leon Beyer, Schoffit, Josmeyer, and Domaines Schlumberger.

While the best known and perhaps most popular Pinot Blancs today may be from Alsace, there are fine versions produced in other countries. In Italy, where the grape is called Pinot Bianco, the northern regions tend to be the most successful in fashioning wines from this varietal. In the Alto Adige, famous for its Pinot Grigio, talented producers also make very worthwhile Pinot Bianco. Among Italian producers you may want to consider are J. Hoffstatter, Jermann, Tiefenbrunner, Elena Walch, Cantina Terlano, Villa Antinori, St. Michael-

WINKOROOD

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Eppan, Cantina Tramin, Muri-Gries, Cantina Andriano, and Alois Lageder. While most Italian producers employ the name Pinot Bianco on their labels, some also use or include the German name for the grape, Weissburgunder. From the Collio region in the very northeastern tip of Italy, producers to look for are Venica & Venica, Mario Schiopetto, Russiz Superiore, Marco Felluga, and Bastianich (from the famous U.S. restaurant family).

We do not find a lot of German Weissburgunder (sometimes written as Weisser Burgunder) in our area, but there are more than a few wine estates that make wine from the grape. Some we may be able to hunt down include those from Donnhoff, Muller-Catoir, Von Winning, Shafer-Frohlich, Selbach-Oster, Marcus Molitor, Leitz, Burklin-Wolf, Pfeffingen, Theo Minges, and Jakob Schneider. Admittedly, when these wineries are afforded shelf space, most often it will be for their Rieslings.

Some good producers of Austrian Weissburgunder (which also may be labeled Pinot Blanc) whose wines we may be able to find include those from Bründlmayer, Heidi Schrock & Sohne, Markus Huber, Rudi Pichler, Neumeister, Kracher, and Prieler. Due to the climate and lake effect in some regions of Austria and the grape's susceptibility to the growth of botrytis cinerea (a good type of fungus, or noble rot, that reduces a grape's water content), some wineries may choose to allow the grapes to become very ripe and dehydrated enabling them to create dessert wines.

For domestic wines, if you check the Long Island section of your favorite wine shop (okay, that may be a stretch), Palmer and Lieb Cellars acquit themselves well handling Pinot Blanc. Perhaps better known and more available are Pinot Blancs from such accomplished Oregon producers as Bethel Heights, Elk Cove, Erath, Brooks, St. Innocent, and The Eyrie Vineyards. While there are offerings from California, either because of scarcity, cost of production, or

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winery reputation, they can be more expensive than other available options. However, there are some that fit most people's view of value such as those from J. Wilkes, Chateau St. Jean, Handley Cellars, Navarro, Girasole, Skylark, Byron, and Four Graces.

I know there are other wineries to consider but I seem to be drawing a blanc. I hope, however, there are enough prospects mentioned here for you to give this Pinot a chance.





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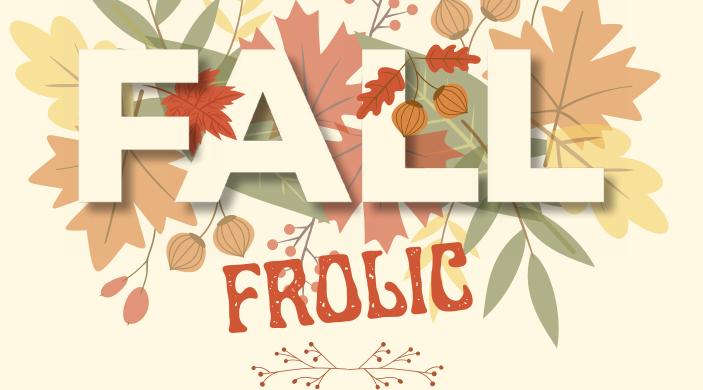
<u>PA CLE Board</u>: Includes 0 hour of Substantive credits, and 1.5 hours of credit for ethics/professionalism. The CCBA charges an additional fee for PA credits. Actual credits earned may be less if seminar is less than 90 minutes.

Need PA	Credits?
PA ID#:	

cancellation Policy: Full refunds will be given to registrants whose cancellations are received at Bar Headquarters at least 48 hours prior to the event. Refunds WILL NOT BE GRANTED THEREAFTER.

Substitute attendees, however, are welcome. This policy also applies to pay-

welcome. This policy also applies to pay at-the-door registrants who will be invoiced if proper cancellation is not provided. PLEASE JOIN US FOR THE CAMDEN COUNTY BAR FOUNDATION'S



NOVEMBER 12 ~ 5-8 PM

\$50 per person

KAMINSKI'S BAR & GRILL
1424 BRACE ROAD, CHERRY HILL
FOOD | DRINKS | FUN

Print clearly – detach and return by November 5, 20	<u>24</u>		(Questions? Call 856.482.0620
Name(s)				<u>Payment:</u> Check enclosed AMEX
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SPONSORSHIPS AVAILABLE

Platinum Sponsor – \$1,000 – includes 4 tickets, mention on event flier, signage on every table at event, and ad in The Barrister & mention on social media

Gold Sponsor – \$500 – includes 2 tickets, signage at event, and mention in The Barrister & mention on social media

Silver Sponsor – \$250 – includes 1 ticket, signage at event

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1939 Marlton Pike East, Suite 120, Cherry Hill, NJ 08003		637		www.camdencountybar.org

This program is for informational purposes only and does not offer CLE credits.



The State of the Camden County Probate Court

WHEN

Thursday, November 14, 2024 12:00pm – 1:00pm

WHERE

Camden County Sustainability Center 508 Lakeland Road, Blackwood, NJ



COST

CCBA Members

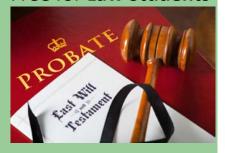
\$50 = Registration Fee

Non-Members

\$65 = Registration Fee

\$30 = Paralegals/ Legal Secretaries

Free for Law Students



MODERATOR

Anthony R. La Ratta, Esq.

Archer & Greiner

SPEAKERS

HON. SHERRI L. SCHWEITZER, P.J. CH.

New Jersey Superior Court

HON, MICHELLE A. GENTEK-MAYER

Camden County Surrogate

ADAM K. ROSEN, ESQ.

Camden County Deputy Surrogate

OVERVIEW

JOIN US AS JUDGE SHERRI L. SCHWEITZER, P.J. CH. PRESENTS THE STATE
OF THE CAMDEN COUNTY PROBATE COURT ADDRESS. JUDGE
SCHWEITZER WILL DISCUSS THE STATE OF PROBATE IN CAMDEN COUNTY,
AND THE COURT'S INSIGHTS AS TO THE BEST AND WORST PRACTICES IN
THE COUNTY. THE CAMDEN COUNTY SURROGATE AND DEPUTY
SURROGATE WILL ALSO GIVE THEIR INSIGHTS.

Estate practitioners will not want to miss this important program!

LUNCH WILL BE SERVED AT THE START OF THE PROGRAM! REGISTRATION

To register via email, ndemarco@camdencountybar.org
To register online, www.camdencountybar.org

Name:			
Address:			
Phone:	Email:		
Credit Card#:		CVV:	_ Exp:

CANCELLATION POLICY. Full refunds will be given to registrants whose cancellations are received at Bar Headquarters at least 48 hours prior to the event. Refunds WILL NOT BE GRANTED THEREAFTER. Substitute attendees, however, are welcome to attend. This policy also applies to pay-at-the-door registrants who will be invoiced if proper cancellation is not provided.





CCBF ANNUAL CHILDREN'S HOLIDAY PARTY

SATURDAY, DECEMBER 7

AT BOYS & GIRLS CLUB 2 S. DUDLEY STREET, CAMDEN

Join us as the Camden County Bar Foundation hosts its annual Children's Holiday Party! Roughly 200 underserved kids will enjoy a day of fun, food, caroling, magic, and, of course, a visit and picture with Santa and his elves, who provide each child with a wrapped gift and goody bag. Volunteers are needed for everything from assisting w/serving breakfast, to keeping the kids occupied as we await the arrival of Santa.

Help us show these deserving kids a great time!

WRAPPING PARTY - DECEMBER 5 @ 5 PM

Help wrap presents and stuff goody bags!
Pizza will be served!

HOLIDAY PARTY - DECEMBER 7 @ 7 AM

Assist with set-up, breakfast, distributing gifts,etc.
Stay as long as you can!

TO SIGN UP TO VOLUNTEER,

CONTACT KARA GRASER

AT KARA@CAMDENCOUNTYBAR.ORG

OR CALL 856.482.0620





JOYFULLY JOIN US AT THE CAMDEN COUNTY BAR ASSOCIATION'S

HOLIDAY **SPARTY**

DECEMBER AT 6:00 PM

TRENO PIZZA BAR 33 HADDON AVENUE, HADDON TWP

\$85 per person (\$75 admitted 5 years or less)

- **#LIVE MUSIC**
- **#FIRST DRINK INCLUDED**
 - 🌞 GOURMET PIZZA
- 🌺 BUFFET STYLE ENTREES

Name(s) Payment: Check enclosed Firm Name AMEX Discover ─ Visa/Mastercard Address City/State/Zip Phone **Email** Credit Card # Exp. Signature (credit card only)

MAKE CHECKS PAYABLE/RETURN TO: CCBA - Holiday Party 1939 Marlton Pike East, Suite 120 Cherry Hill, NJ 08003



www.camdencountybar.org