

CUMMINGS, McCLOREY DAVIS & ACHO

DEFEND CITIES WITH SUCCESS

DECEMBER, 2001

As many of you are aware, the attorneys at Cummings, McClorey, Davis & Acho defend many cities throughout the state of Michigan and beyond. While we specialize in several practice areas, our attorneys have concentrated on municipal law since our firm was first founded in 1965.

City Not Responsible for Accident

In a recent case handled by Patrick Moritz, the Plaintiff was a regular patron of a racetrack in a metropolitan Detroit city. After the race ended one night in December of 1998, he made his way across the public street adjacent to the racetrack and was struck by a motor vehicle operated by another racetrack patron. He was seriously injured.

The Plaintiff and his wife brought suit in Wayne County Circuit Court against the motor vehicle operator and the City. The allegations against the City were that it was statutorily required, under the Horse Racing Law of 1995, to provide traffic protection for persons at, and near, the racetrack; that it was engaged in a proprietary function to a private facility and made a profit by receiving a percentage of the racetrack revenues; that a "special relationship" existed between the Plaintiff and the City by virtue of the statutory mandate; and that the City's decision to not provide any traffic protection on the street where the Plaintiff was struck was an ultra vires act. Finally, the Plaintiff claimed the City was not entitled to the defense of governmental immunity.

Through discovery, it was learned that the City received millions of dollars from the racetrack over the years, but never provided any traffic protection for racetrack patrons crossing the public streets adjacent to the racetrack. The City did not put up any pedestrian signs, install any crossing signs, erect any street lights, put in a crosswalk, etc. At one time the City had a police officer direct traffic, but that was only for the racehorses that were being led by their trainers across the street. The Plaintiff had two experts who were prepared to testify that the City could, and should, have done a number of things that would have prevented the accident.

Patrick filed a Motion for Summary Judgment and argued the following:

- even if the City didn't provide the mandated traffic protection, the Horse Racing Law of 1995 does not provide for any private cause of action, such as the one Plaintiff asserted;

- the City was not engaged in any proprietary function because providing traffic protection is, by its very nature, a nonproprietary, governmental function;
- the "special relationship" exception to the public duty doctrine does not apply to governmental entities; and
- the discretionary decision to not provide any traffic protection wasn't ultra vires, but rather a legitimate exercise of the City's police power.

The court agreed with all the defense propositions and granted the motion, dismissing all claims asserted against the City.

City Not Responsible for Fall on Bike Path

In another case, Karie Boylan was able to obtain a dismissal of a lawsuit after oral argument on a vigorously opposed Motion for Summary Judgment. In this case, a couple filed a lawsuit against a municipal client after the husband was seriously injured in a bike accident. The couple argued that their claims fell under the "highway exception" to governmental immunity because the accident occurred on a sidewalk. Karie filed a Motion for Summary Judgment arguing that no exception to immunity applied because the accident occurred on a bike path. The trial judge agreed with Karie and dismissed the case with prejudice.

After losing at oral argument, the couple's attorney filed a motion asking the Judge to reconsider his position and reinstate the case. The Judge denied that motion too, and in doing so, incorporated the arguments raised by Karie in the Township's brief in opposition to the Plaintiffs' Motion for Reconsideration.

On behalf of the Township, Karie filed a motion to recapture costs as a prevailing party and for sanctions based on the Plaintiff's filing of a frivolous Motion for Reconsideration. The motion is still pending.

Lastly, as the holiday season is upon us, we wish all our friends a wonderful holiday season with happiness throughout the coming year!

Timothy Young, Managing Partner

in this issue

**Our Dedicated
Support Staff
is Here to Stay**

2

Attorney Profile

3

**IRS Expands
Education Funding
Benefits**

3

Office Locations

4

OUR DEDICATED SUPPORT STAFF IS HERE TO STAY

In previous newsletters the accomplishments of our highly skilled attorneys have been highlighted. This month, we thought you would enjoy learning about two of our dedicated and talented support staff employees that help our attorneys do the superb job that they do. Vicki DeVitis and Mary Miller deserve special recognition. Aside from our co-founders, they have worked at the firm the longest.

When a friend told Vicki DeVitis about a secretarial opening at Cummings, McClorey, Davis & Acho in 1976, she crossed her fingers and hoped she got the job. She had recently graduated from high school and was looking for a secretarial position in the legal field. Well, Vicki got the job and has been at our firm ever since.



Vicki DeVitis

There were only five attorneys working out of one location (our Livonia office) when Vicki started. Today, 44 attorneys work out of nine different offices. As you can imagine, Vicki has seen the firm go through substantial growth. Although one thing she enjoys most about her job is interacting with new clients and employees, she admits that the way the firm was 26 years ago could never again be duplicated. The five attorneys and support staff were very close friends, in fact, they considered one another family.

In 1982 she began working as Robert Blamer's secretary and has been his secretary ever since. Vicki feels fortunate to have such a considerate boss whom she also considers a close friend. "I'm blessed to have such a great guy to work for. It's truly been an experience," Vicki said.

Having worked at the firm for 26 years, Vicki is obviously a very dedicated employee. When Vicki was pregnant with her second child, she continued to work up until she went into labor...literally. In fact, had the ambulance not arrived when it did, her daughter would have been born in our lobby! Instead, Vicki delivered Heather in an ambulance on the way to St. Mary's Hospital.

Many of you may be familiar with the name Mary Miller. She has worked for our firm since January of 1978 and has been Mr. Cummings secretary for 19 years. Before working at CMDA, Mary was a temporary legal secretary at Ford Motor Company, which is where she met Mr. Acho. He was doing legal work for Ford and invited Mary to join the firm. She is glad she did.



Mary Miller at her desk

Mary feels blessed that being part of our firm for so long has made her part of the CMDA family, as well as an essential part of the firm. "I have enjoyed watching the firm and the family grow together. It has been a wonderful experience, and it feels good knowing that I have been part of that experience," Mary explained.

Mary likes how we have diversified our practice areas, which has helped make the firm grow over the years. She also enjoys working for her boss. "I have especially enjoyed working for Mr. Cummings for the past 19 years because of his sincere kindness towards people. He makes house calls, does a great deal of pro bono work and truly has a great love for people in general," said Mary.

When asked if she ever considered looking for another job during her 24 years of employment, Mary's reply was simple: "no, not once, never". Well, maybe once or twice, but never seriously. The high level of respect and loyalty she receives from our clients and attorneys, especially Mr. Cummings and Mr. Acho, has kept her at CMDA for all these years.

Although there was only room to highlight two support staff employees in this article, all employees deserve special recognition for the hard work that they do every day. In future newsletters, look for more support staff profiles. As talented as our attorneys are, they couldn't do the job that they do without the assistance of all our wonderful support staff!

Jennifer L. Sherman

Attorney Profile

Christopher C. Schultz



Chris, a partner in our Farmington Hills office, concentrates his practice on corporate law, transactional law, tax and estate planning and general business. He received his Juris Doctorate degree from the University of Detroit School of Law in 1984.

Chris is a Certified Public Accountant; is a member of the State Bar of Michigan, the Michigan Association of Certified Public Accountants and the American Institute of Certified Public Accountants. He has given numerous lectures on estate and succession planning throughout his career to a variety of audiences.

He received his Bachelor of Arts degree in Accounting from Wayne State University in 1981. Chris can be reached at cschultz@cmda-law.com or by calling our Farmington Hills office at 248.737.3333.

IRS EXPANDS EDUCATION FUNDING BENEFITS IN 2002

The Economic Growth and Tax Relief Reconciliation Act of 2001, better known as the Tax Act, was signed by President Bush on June 7, 2001. The Tax Act provides several tax relief benefits, including improvements on two tax savings programs: the Educational IRA and the Qualified State Tuition Programs. These two programs assist in the payment of educational expenses.

An Education IRA is an account setup by a donor (typically a parent or grandparent) to assist in the payment of a beneficiary's educational expenses. Contributions to an Education IRA are not deductible, but there is no tax on the earnings on the account. Distributions used for the beneficiary's qualified educational expenses are not taxed and are not included in the beneficiary's income. In 2001 and in previous years, distributions of the earnings on the contributions were taxed to the beneficiary. Annual contributions were limited to \$500 per beneficiary per year.

The Tax Act increased the annual contribution amount from \$500 to \$2,000 per year beginning in 2002. The Tax Act also allows an Education IRA to be used for payment of expanded qualified educational expenses, including expenses of elementary or secondary schools, whether they are private, public or religious. The expanded qualified expenses include the cost of tuition, fees, books, supplies and equipment and expenses for special need services for beneficiaries with special needs.

In addition to an Education IRA, the Tax Act also improved the Qualified State Tuition Programs. These programs allow states, and certain qualified educational institutions, to create college savings plans referred to as Qualified Tuition Plans.

Similar to an Education IRA, these plans are designed to provide income

tax incentives to accounts that are set up to pay for a beneficiary's future educational expenses. There is no income tax deduction for contributions to State Tuition Plans, but the earnings on the account are not taxed.

A clear distinction between an Education IRA and a qualified State Tuition Plan is the monetary limit that can be contributed annually. A donor to a State Tuition Plan can contribute up to \$100,000 on a tax-free basis per year, subject to state imposed limitations. As mentioned previously, the maximum annual contribution of an Education IRA is now \$2,000. Another distinction between the two tax savings programs is the allowance of the payment for enhanced qualified educational expenses. The enhanced list of permissible expenses allowed for Education IRAs are not applicable for qualified State Tuition Plans. Qualified educational expenses under a State Tuition Plan remain limited to costs relating to undergraduate and graduate education only, including tuition, room and board, fees, books, supplies and equipment. The Tax Act, however, does allow private educational institutions to sponsor their own Qualified Tuition Plan programs starting in 2002.

Both tax savings programs allow a roll-over of benefits. For an Education IRA, the unused portion of the IRA can be rolled over to a younger child's use. With a Qualified State Tuition Plan, the funds can be transferred to another beneficiary of the same generation, if the intended beneficiary does not attend college or receives scholarships.

Please contact one of our qualified attorneys for more information on the Education IRA and/or the Qualified State Tuition Programs.

CUMMINGS, McCLOREY, DAVIS & ACHO
OFFICE LOCATIONS

MICHIGAN

Livonia

33900 Schoolcraft
Livonia, MI 48150
Telephone: 734.261.2400
Fax: 734.261.4510

Battle Creek

25 West Michigan Ave.
Suite 909
Battle Creek, MI 49017
Telephone: 616.963.7800
Fax: 616.963.4707

Farmington Hills

30555 Northwestern Hwy.
Suite 200
Farmington Hills, MI 48334
Telephone: 248.737.3333
Fax: 248.737.3330

Marquette

307 South Front Street
Marquette, MI 49855
Telephone: 906.228.8263

Roseville

25509 Kelly Road
Suite C
Roseville, MI 48066
Telephone: 586.775.5200
Fax: 586.777.6896

Traverse City

3939 M-72 East
Williamsburg, MI 49630
Telephone: 231.938.2888
Fax: 231.938.2988

ARIZONA

Phoenix

1850 North Central
Suite 1450
Phoenix, AZ 85004
Telephone: 602.207.2829
Fax: 602.207.6943

CALIFORNIA

Woodland Hills

21031 Ventura Blvd.
Suite 1200
Woodland Hills, CA 91364
Telephone: 818. 884.6666
Fax: 818.884.8677

GERMANY

Berlin, Germany

Manquen, Lokau & Partner
Rechtsanwälte
Rheinstraße 45
12161 Berlin

Our Vision

To meld our legal expertise, professional support staff, technical resources and variety of locations to deliver first rate legal services at a fair value to a full range of business, municipal, insurance and individual clients.

CUMMINGS • McCLOREY



DAVIS & ACHO, P.L.C.

ON LAW is a monthly publication from
Cummings, McClorey, Davis & Acho, P.L.C.

Comments and questions regarding specific articles should be addressed to the attention of the contributing writer. Remarks concerning miscellaneous features or comments to the editor should be addressed to the attention of Jennifer Sherman.

CMDA- ON LAW
33900 Schoolcraft
Livonia, Michigan 48150
1-800-865-7222 ext. 223
www.cmda-law.com
E-Mail: cmda@cmda-law.com

Editor-in-Chief/Graphic Designer:
Jennifer L. Sherman

ON LAW is intended for informational purposes only and should not be used as a substitute for individual legal advice. Please consult an attorney regarding your particular situation.

Happy Holidays!

CUMMINGS • McCLOREY
DAVIS & ACHO, P.L.C.
33900 SCHOOLCRAFT
LIVONIA, MICHIGAN 48150



PRSR STD
U.S. Postage
PAID
Mail-Tek
21002 Bridge
Southfield, MI