

Tax Effects of the Patient Protection and Affordable Care Act

As a result of the recent Supreme Court ruling to uphold the constitutionality of the Patient Protection and Affordable Care Act (PPACA), there will be some tax effects for workers and recipients of investment income.

Beginning in 2013, an additional 0.9% in Medicare taxes are assessed on wages in excess of \$200,000 for single filers, and \$250,000 for married, filing jointly, or \$125,000 each when married and filing separately. Further, a new 3.8% Medicare tax is imposed on Net Investment Income for all taxpayers whose “adjusted gross income” exceeds the benchmarks stated above.

Additionally, taxpayers will lose some deductions, which is a form of increased income tax to be paid. The itemized deduction threshold for medical expenses will increase from 7.5% of adjusted gross income to 10% of adjusted gross income. This means fewer medical deductions will be allowed to some taxpayers, resulting in an increase in tax.

There will also be changes in the amount of contribution a taxpayer may contribute to a Flexible Spending Account. The amount that an employee can contribute will be reduced from \$5,000 per year to \$2,500 per year, with the result that medical

expenses that would otherwise be paid from a Flexible Spending Account financed by the employee with pretax dollars in excess of \$2,500, but less than \$5,000, will no longer be deductible.

Beginning in 2014, most individuals must obtain “qualifying health insurance” coverage, either from their employer or on their own, or be subject to an imposed penalty in the nature of additional tax for failing to obtain qualifying health insurance.

Employers with employees in excess of an average of 50 full-time employees during the preceding calendar year must offer health insurance coverage for all full-time employees or become subject to an excise tax based on the number of its full time employees in excess of 30. The new PPACA requires that the employer offer a statutorily defined minimum level of health insurance coverage.

Gerald C. Davis

Gerald C. Davis is a partner in our Livonia office where he concentrates his practice on business and employment law, transactional, leveraged buy-outs, company reorganization and refinancing, analyzing investments for joint ventures, intellectual property and drafting loan agreements. He can be reached at (734) 261-2400 or gdavis@cmda-law.com.

Michigan Supreme Court Overturns Insurance Precedent

The Michigan Supreme Court has discarded the 36-year-old doctrine that once prevented insurance companies from denying claims based on fraudulent statements made in an insured’s application. Previously, the law stated that an insurer could not deny liability in the event of fraud found on an insured’s application if the fraud would have been “easily ascertainable” by the insurer. Now, fraud, if proven, can serve as a complete bar to recovery. Insurance companies no longer have

the duty to investigate and may rely solely on the insurance application.

In the case of *Titan Insurance Company v Hyten*, Hyten’s driver’s license had been suspended. Her mother had been informed that insurance could not be provided until Hyten’s license was reinstated. So, with the help of the insurance agent, Hyten’s

continued on page 3

in this
issue

Tax Effects of the PPACA.....	1	Sterling Heights Attorneys Obtain Dismissal.....	2
MI Supreme Court Overturns Insurance Precedent..	1 & 3	Attorneys Obtain Significant Victory.....	3
CMDA Happenings	2	Office Locations	4

CMDA Happenings

MACP Conference Well Attended

Several attorneys from our Firm recently participated in the Michigan Association of Chiefs of Police (MACP) Annual Summer Training Conference held in Harbor Springs, MI. The conference was attended by chiefs of police, sheriffs, 911 dispatch coordinators, Michigan State Police and various other law enforcement-related officials.

Ethan Vinson, a partner in our Livonia office, and Mark Rouland, an attorney in our Livonia office, gave an informative presentation on excessive force to all of the participants. Andy Brege, an attorney in our Grand Rapids office and Haider Kazim, a partner in our Traverse City office, also attended the conference. All of our attorneys enjoyed having the opportunity to further enhance and develop new relationships with the MACP members.

Law Enforcement Meeting

CMDA was a co-sponsor of the Michigan Municipal Risk Management Authority's (MMRMA) Joint Law Enforcement Advisory Committee Meeting held in Gaylord, Michigan

Haider Kazim, a partner in our Traverse City office, and Mark Rouland, an attorney in our Livonia office, attended the meeting, which focused on the policies, procedures, legislation, training and resources of law enforcement.

New National Legal Counsel of AOH

Congratulations to Patrick Sturdy, an attorney in our Livonia of-

fice, who was recently appointed the National League Counsel of the Ancient Order of Hibernians, America's oldest Irish Catholic Fraternal Organization.

Guest Author for Michigan Lawyers Weekly

Further congratulations to Patrick Sturdy who was recently a guest author for *Michigan Lawyers Weekly*, a highly-regarded publication that provides legal news to attorneys throughout the state of Michigan. Patrick's article focuses on the importance of educators being mindful of copyright issues in the academic setting. You can check out the full article on our website at www.cmda-law.com.

Senior Citizens' Seminar a Hit

Chris Schultz, a partner in our Livonia office, and Patrick Sturdy, an attorney in our Livonia office, recently participated in the Senior Citizens' Seminar at the Civic Park Senior Center in Livonia. Mr. Schultz gave a presentation on estate planning issues and Mr. Sturdy served as moderator. The Firm looks forward to putting on additional seminars in the coming months.

MAC Conference in September

Several attorneys from our Firm will be attending the Michigan Association of Counties (MAC) Annual Conference, which will be held September 23-25, 2012 at Shanty Creek Resort in Bellaire, MI. If you are attending the Conference, we look forward to seeing you in September!

Sterling Heights Attorneys Obtain Dismissal of Five Cases in 11 Days

In a recent span of just 11 days attorneys Timothy Ferrand and Jason Thomas from our Sterling Heights office obtained Summary Judgment for our clients on five separate cases. This string of dismissals came within weeks of the dismissal of another case and was immediately preceded by a significant appellate victory in federal court (see article on page 3).

In the first case dismissed, the plaintiffs brought claims in Federal Court alleging Fourth and Fourteenth Amendment constitutional violations and false arrest and imprisonment against a Michigan municipality and one of its police officers. In its Opinion and Order Granting Defendant's Motion for Summary Judgment, the Court held the plaintiffs lacked sufficient evidence to sustain their claims.

This was followed by the dismissal in State Court of age and race discrimination claims that were brought against a Michigan community college and one of its instructors by a disgruntled ex-student. That same day, Summary Disposition was granted in a trip and fall side-walk defect claim that was brought against a municipal client in State Court. Also that same day, Summary Judgment was granted in a complex age discrimination claim that had been brought by a former employee of a municipal client in Federal Court.

of its instructors were dismissed in a Federal Court action in which a former student alleged equal protection violations and reverse gender discrimination and retaliation.

The previous month Summary Judgment was obtained on behalf of our client, a Michigan state Court Judge, in a complex First Amendment retaliation and wrongful discharge case filed in Federal Court.

On the recent string of success at the Sterling Heights office, Tim Ferrand explains, "We have an exceptional team. Jason and I work well together on the files and we have smart and hard-working support staff." Jason Thomas points out that, "Tim is relentless about pursuing all angles for our clients and he places a lot of emphasis on producing briefs that are thorough, nuanced and rich in detail. The result is that a very high percentage of the claims against our clients end up being dismissed, including this string of cases."

Jason J. Thomas

Timothy S. Ferrand is a partner in our Sterling Heights office where he concentrates his practice on municipal law, labor and employment law and utility law. He can be reached at (586) 731-5000 or tferrand@cmda-law.com. Jason J. Thomas is an attorney in our Sterling Heights office where he concentrates his practice on municipal law and insurance coverage, analysis and litigation. He can be reached at (586) 731-5000 or jthomas@cmda-law.com.

2 The next day all claims against a local community college and two

CMDA Attorneys Obtain Significant Victory in Federal Appellate Court

Tim Ferrand, a partner in our Sterling Heights office, and Karen Daley, head of CMDA's appellate division, recently obtained a Judgment from the United States Court of Appeals for the Sixth Circuit (Sixth Circuit) that affirmed the lower court's dismissal (won by Mr. Ferrand in 2011) of Fourth Amendment police stop, arrest and detention claims brought against several police officers of a Michigan municipality.

The case arose out of the stop, detention and transportation of the plaintiff by police for psychiatric evaluation. Police officers stopped the plaintiff for a traffic violation. Inside the vehicle they noticed a sleeping infant under a pile of personal belongings. The plaintiff indicated that he was headed with his infant son to Ohio and that he did not know where the child's mother (his wife) was. The plaintiff's wife was contacted and she reported a domestic disturbance and custody dispute had occurred earlier that day. After the plaintiff was transported to the police department, his wife advised officers that he had become violent towards her and threatened suicide earlier that day. He was transported for psychiatric evaluation.

In its ruling, the Sixth Circuit held that "reasonable suspicion" existed for the motor vehicle stop. The Court noted that all factors must be considered when determining whether or not "reasonable suspicion" was present. In this case, the plaintiff's route of travel, the time of night, the location of his vehicle in a high crime area and the fact that the vehicle was packed to the ceiling with personal items must be considered together. The Court held that all of these factors, when taken together, constituted "reasonable suspicion" to justify the motor vehicle stop.

Second, the Court held that the length of detention was not unreasonable in light of the circumstances presented. The Court held that the circumstances of the traffic stop, the presence of the child in the vehicle, the plaintiff's out of state destination and not knowing his wife's location made it reasonable for officers to suspect the plaintiff was attempting to conceal a child from his wife, a

possible violation of Michigan's parental kidnaping statute. These concerns justified the officers in extending the seizure beyond the limited scope of the brief stop.

Next, the Court discussed how an investigatory detention may ripen into a seizure, at which point officers must possess "probable cause". Here, the Court concluded the plaintiff was, in fact, arrested. However, the Court found there was "probable cause" to make the arrest. Probable cause was based on the plaintiff's violation of Michigan law in the officer's presence as plaintiff (by his own admission) was not in possession of a valid Michigan driver's license at the time of his traffic stop. The Court alluded to the fact that there was a possible alternative basis for probable cause based on the information regarding the domestic violence incident between the plaintiff and his wife. However, the Court found it unnecessary to analyze that issue because of the existence of probable cause based on the driver's license violation.

The final aspect of this case involved the transportation of the plaintiff to the hospital for a psychiatric evaluation. The Fourth Amendment requires an officer seizing and obtaining a person for psychiatric evaluation to have probable cause to believe the person is a danger to himself or others. Here, the Court found probable cause existed. During his detention by police, the plaintiff made a series of disturbing comments. The plaintiff's wife informed officers that he had been violent earlier that evening, had destroyed property, held a knife to his neck and threatened his own life. The plaintiff's wife warned police that he had told her he wanted her family to "die and to suffer". Based on this information, the Court found probable cause existed to transport the plaintiff for a psychiatric intervention.

Based on the same information, the Court dismissed the plaintiff's state court claims for assault and battery, false arrest and false imprisonment. The court found "probable cause" for the officer's actions and no indication the force used by the officers was excessive or unreasonable in nature.

Michigan Supreme Court Overturns Insurance Precedent (cont.)

mother completed a back-dated insurance application, attesting there were no unlicensed drivers in the household. Previously, because an insurer could have easily verified the status of Hyten's driver's license, this fraud would not serve as a bar to recovery. Now, insurance companies may deny such claims.

To prove fraud now, insurance providers need only prove the following: the customer made a 1) material (mis)representation; 2) the representation was false; 3) the customer knew the representation was false when she made it; 4) the customer made the misrepresentation with the intent the insurance company would rely on it; and 5) the insurance company suffered damages as a result.

While the insurance company enjoys the lower burden of prov-

ing "actual reliance," the insured must meet the higher burden of proving that they "reasonably relied" on the insurance agent's representations, if they wish to bind the insurance company under agency law. This is significant, and the Court does not explain why insurance companies face only a subjective standard, while the insured that rely on what their agents say face a tougher, objective standard.

Linda Davis Friedland

Linda Davis Friedland is an attorney in our Livonia office where she concentrate her practice on Commercial Litigation, Employment and Labor Law, Corporate and Business Law, Estate Planning, Utilities Law and Municipal Law. She can be reached at (734) 261-2400 or lfriedland@cmda-law.com.

CUMMINGS, McCLOREY, DAVIS & ACHO Office Locations



MICHIGAN

Livonia

33900 Schoolcraft Road
Livonia, MI 48150
Telephone: 734.261.2400
Facsimile: 734.261.4510

Grand Rapids

2851 Charlevoix Drive, S.E.
Suite 327
Grand Rapids, MI 49546
Telephone: 616.975.7470
Facsimile: 616.975.7471

Sterling Heights

43409 Schoenherr Road
Sterling Heights, MI 48313
Telephone: 586.731.5000
Facsimile: 586.803.1034

Traverse City

125 Park Street
Suite 415
Traverse City, MI 49684
Telephone: 231.922.1888
Facsimile: 231.922.9888

CALIFORNIA

Riverside

3801 University Avenue
Suite 560
Riverside, CA 92501
Telephone: 951.276.4420
Facsimile: 951.276.4405

MISSOURI

Kansas City

The Palace Building
1150 Grand Blvd. Suite 270
Kansas City, MO 64106
Telephone: 816.842.1880
Facsimile: 816.842.0046

GHANA

Accra, Ghana

P.O. Box 12556
Accra, Ghana
Telephone: +223-21-224260
Facsimile: +233-21-232262



www.facebook.com
twitter.com/CMDALAW

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.

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 should be addressed to the attention of Jennifer Sherman.

CMDA- On Law
33900 Schoolcraft Road
Livonia, Michigan 48150
(734) 261-2400
www.cmda-law.com
E-Mail: jsherman@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.

Would you like to reference previous issues of On Law?

View them at www.cmda-law.com.

PRRST STD
US POSTAGE
PAID
PERMIT NO. 63
SOUTHFIELD, MI

33900 Schoolcraft Road
Livonia, Michigan 48150

