

OKH&C ORTALE, KELLEY, HERBERT & CRAWFORD QUARTERLY REPORT

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DON'T LOSE YOUR CHARITABLE DEDUCTION

For you to claim a federal income tax deduction for a charitable donation valued at \$250 or more, you must obtain from the recipient of the donation a "contemporaneous written acknowledgment letter". Failure to obtain such a letter can result in a disallowance of the deduction by the IRS.

The acknowledgement letter, which may be in the form of a thank you letter to you as the donor, should include the following information:

- the name and address of the recipient of the donation;
- the amount of a cash gift or, if not in cash, a description of the donation sufficient to identify the nature of the gift; and, if applicable,
- a statement that no goods or services were provided by the recipient in return for the donation, or a description and good-faith estimate of the value of any goods and services that were provided by the recipient in return for the donation.

As some donor taxpayers have discovered to their consternation, including some who have made

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OKH&C PARTNERS NAMED IN SUPER LAWYERS MAGAZINE



Wendy Lynne Longmire



Julie Bhattacharya Peak

Wendy Lynne Longmire, a partner in Ortale, Kelley, Herbert & Crawford since 1993, was named in Super Lawyers Magazine in 2006, 2007, 2009, 2010 and nominated again in 2011 for her expertise in practice areas of Medical Malpractice, Products Liability and Civil Litigation Defense. Super Lawyers magazine names attorneys in each state who received the highest point totals, as chosen by their peers and through the independent research. Super Lawyers selects attorneys using a rigorous, multiphase rating process. Peer nominations and evaluations are combined with third party research. Each candidate is evaluated on 12 indicators of peer recognition and professional achievement. Selections are made on an annual state-by-state basis.

Julie Bhattacharya Peak, a partner in the firm since 2007, was named in Super Lawyers Magazine "Rising Stars" in 2010 and 2011 for her expertise in the practice areas of Civil Litigation Defense, Employment and Labor and Medical Malpractice. Rising Stars names the state's top up-and-coming attorneys either 40 years old or younger or in practice for ten years or less. The selection process is the same as Super Lawyers, with the exception of peer evaluation by practice area.

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CHALK ONE UP FOR THE LITTLE GUY

Nate Thoma is not a lawyer, but he is a soft-spoken, yet confident, small investor in Washington Mutual, the big bank that was seized by the federal government in 2008 and ended up in bankruptcy. As for so many other investors, Nate's stake in the bank was wiped out. Nate became something of a folk hero during that tumultuous period when big banking institutions were failing and the little people always seemed to get the short end of the stick as the messes were being cleaned up.

Nate's big moment came when, after he had spent untold hours analyzing the Washington Mutual case, the federal bankruptcy judge let him have his say—and at some length—in a hearing that culminated in an investigation of trading by some very large hedge funds and in the rejection of a bankruptcy plan for the bank.

The issues made for a real legal thicket, especially for a novice to sort out. Essentially, Nate's complaint, on behalf of the many small investors in the bank, was that the hedge funds were buying up the bank's trust preferred securities that go to the front of the line for any money distribution from the bank's estate.

The hedge funds also owned the bank's bonds, so their dominate ownership of both classes of securities would help them control the course of the bankruptcy, to their benefit and to the corresponding detriment of the little guys. Nate's oral argument and his accompanying 33 pages of supporting documents no doubt played a role in an eventual favorable settlement between small investors like himself and the hedge funds, a settlement that may also have shown the way for the bank's exit from bankruptcy. 

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COURTROOM NOTES

□ Plaintiff filed suit against Defendant for malicious prosecution. This case stems from Plaintiff's purchase of acreage for the purpose of building a barn and farming the land. Neighbor Defendant did not want the "woods" cleared immediately behind his house and approached Plaintiff numerous times about purchasing some acreage (for purposes of retaining the woods) immediately behind his property. Plaintiff declined all offers to purchase. Plaintiff had the acreage surveyed, stakes were placed and Plaintiff began clearing the land. When he got to the acreage immediately behind Defendant's property, cutting literally some twigs with a pair of pliers to allow for a straight line of twine to begin putting in the fence posts, and, after a verbal altercation, the Defendant filed criminal charges against Plaintiff. The Defendant stated, under oath, that Plaintiff had cut over 100 trees to erect a fence that was possibly on Defendant's property. Although the criminal charges were ultimately dismissed by the Defendant, this case proceeded on to trial. A jury awarded the Plaintiff \$5,000 in punitive damages, together with \$66,500 for malicious prosecution and compensatory damages, for a total verdict of \$71,500 for Plaintiff. **D. Andrew Saulters for Plaintiff.**

□ Plaintiff inmate filed suit against the County after he shot himself in the foot, alleging said County failed to protect him, allowing access to a shotgun and shells accidentally left within access to the inmate. At trial, the court found the injury was intentional and that the County did not have a duty to protect him against intentionally injuring himself. **Michael T. Schmitt, counsel for Defendant County.**

□ Plaintiff parents filed suit on behalf of their minor child, after the child received injuries when a ceiling fan fell in the bedroom of their vacation rental property. The minor received a cut to his forehead which left a permanent "divot" impression. Plaintiffs could not carry their burden of proof to establish that the fan was defectively designed or breach of any warranties. Summary Judgment was granted to Defendant ceiling fan manufacturer. **Paul M. Buchanan, counsel for Defendant Ceiling Fan Manufacturer.**




D. Andrew Saulters

HELPING THOSE IN NEED

Although not headquartered here, the International Justice Mission has strong ties to our area through local Christian musicians and supportive area churches working diligently to further their cause.

IJM, based in Washington, D.C., is a human rights agency that brings rescue to victims of slavery, sexual exploitation and other forms of violent oppression. Every day, IJM lawyers, investigators and social workers partner with local governments in 13 countries to rescue victims of violence and secure long-term aftercare; prosecute their perpetrators; and ensure that local laws, police and courts protect the poor from abuse.

Ortale, Kelley Partner and Franklin resident, Drew Saulters, has supported IJM for years, after he was introduced to IJM founder, Gary Haugen, in 1995 when he spoke to Mr. Saulters' church (Christ Community). IJM helps poor individuals who have been sold into slavery, many of those being young women and girls who have been trafficked into a sex slave trade.


Mr. Saulters is a member of IJM's Benefit Committee, which organizes a Nashville benefit dinner each year. The benefit chairmen for 2011 are Grammy-award winning producer Charlie Peacock and his wife, Andi Ashworth. 

Don't Lose Your Charitable Deduction

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very large donations, the timing of the receipt of the letter can be as important as its contents. The rule to bear in mind is that you must obtain the acknowledgement letter by the date of the filing of the tax return for the year in which the charitable contribution was made. You run the risk of being denied the deduction in assuming that it will suffice if the letter has been promised or will be received after the return has been filed but before you would ever hear from the IRS.

Recently, the Chief Counsel for the IRS underscored the need for having the donation acknowledgement letter in hand (or in your e-mail inbox) when you file your return in order to qualify for the deduction. The Federal Tax Code actually has a provision that states that the donor is not required to obtain an acknowledgement letter if the recipient organization itself files a return that meets applicable requirements and includes the required information about the gift. Nonetheless, because no implementing regulations on this law have been issued, the chief counsel determined in a memorandum that a donor cannot take this route to claim the deduction.

The takeaway lesson for donor tax-payers is to be sure that you receive your acknowledgement letters before you file, and do not make the mistake of assuming that the IRS will cut you some slack if, for whatever reason, that deadline is missed. 

Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.

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*Ortale, Kelley, Herbert & Crawford was founded in 1971 by founding partners
William P. Ortale, John W. Kelley, Jr., David B. Herbert and William H. Crawford, Jr.
and has become one of Nashville's preeminent litigation, corporate and commercial real estate firms.*