

# THE COUNSELOR

## THE IRREVOCABLE LIFE INSURANCE TRUST STILL A VIABLE ESTATE PLANNING TECHNIQUE

— By *Jonah H. Blumenthal*

An Irrevocable Life Insurance Trust (“ILIT”) is a widely used estate planning tool to hold one or more life insurance policies. Most commonly, the ILIT is used to remove life insurance proceeds from the settlor/insured’s estate for estate tax purposes. If the insurance policy is owned by an individual (rather than an ILIT), the policy proceeds are included in his or her estate, thus the proceeds may be subject to estate taxes. By having an ILIT own an insurance policy, the insured must relinquish certain rights over the trust assets but, if correctly implemented, the ILIT is especially advantageous since the ultimate payout to the beneficiaries is completely free from both income and estate tax.

The new tax legislation raised the federal estate, gift and generation-skipping transfer tax exemption to \$11.2 million per person, an increase from the \$5.49 million per person limit applicable in 2017. The exemption amount is indexed for inflation each year until January 1, 2026, when, absent further legislation, it returns to the 2017 levels.

Despite the sharp increase of the federal exemption amount, the use of an ILIT is still an important estate planning technique. ILITs can also be used for creditor protection. Assets held in an ILIT are shielded against claims from creditors of the insured since the insured does not own the assets held in the trust. Another common use of the ILIT is to create liquidity when an estate is primarily comprised of illiquid assets. The cash generated in the ILIT can be used for the eventual payment of estate taxes. In other words, if at the time of the settlor’s death, the estate lacks the liquidity to pay estate taxes, the trust beneficiaries can use the insurance proceeds to pay such taxes. This is particularly important for business owners or collectors who would be negatively impacted from liquidation.

As with many other trusts, if the insured has descendants who are minors or receiving government benefits, the ILIT can create sub-trusts for them in order to properly manage the assets allocated to them under the terms of the trust. For a minor, the ILIT would appoint a trustee to manage the insurance proceeds so the money set aside for that minor will be used in a responsible manner. For a descendant receiving government benefits, the ILIT will permit the funds to be used by that descendant without compromising such government benefits.

When purchasing an insurance policy, it is ideal to have the ILIT rather than the insured purchase the policy. Alternatively, one may transfer an existing insurance policy to an

## FIRM RESULTS

Robert H. Groman and Barry C. Feldman persuaded the IRS to withdraw a proposed gift tax deficiency against a client in excess of \$6,200,000, plus interest. Messrs. Groman and Feldman also convinced the IRS that the amount of the gifts which had been reported on the return was overstated by over \$1,500,000. As a result of these efforts, the total tax savings for the client will be over \$6,800,000.



*Partner Robert H. Groman*



*Of Counsel Barry C. Feldman*

Barry C. Feldman persuaded the IRS to compromise a liability for unpaid employment trust fund taxes against our clients in excess of \$1,500,000 for a payment of \$250,000 over two years. Mr. Feldman utilized the provisions Section 7122 of the Internal Revenue Code authorizing such reductions in achieving the 83 per cent reduction in tax.

## FIRM MENTIONS

### NEW YORK TIMES

Twenty-two Firm attorneys were named Super Lawyers or Rising Stars and were featured in a New York Times supplement and SuperLawyers Magazine. The list included: Jeffrey Forchelli, Dan Deegan, John Terrana, Joseph Asselta, Frank Brennan, Joseph Cuomo, Kathleen Deegan Dickson, Alexander Leong, Gregory Lisi, Gerard Luckman, Peter Mineo, Mary Mongioi, Judy Simoncic, Peter Skelos, Jeffrey Stark, and Russell Tisman. The Rising Stars were Douglas Atkins, Stephanie Alberts, Danielle Gatto, Nathan Jones, Robert Renda, and Danielle Tricolla.

### NEWSDAY

**Dan Deegan** was quoted regarding his representation of D & F Development about tax incentives for a Levittown project. **Kathleen Deegan Dickson** was noted as a member of Nassau County Executive Laura Curran's transition team.

### LONG ISLAND BUSINESS NEWS

**Peter B. Skelos** was featured in the executive profile, "Beyond the Bench," highlighting his ability to appear before the appellate courts where he was once a judge. **Dan Deegan** was featured in Who's Who in Real Estate Law's special section. He answered the question, "What would be the one tip you would give to someone heading into a commercial/residential transaction in 2018?"

### NASSAU LAWYER

**Lisa Casa's** article was featured in the Labor & Employment Law section: "Ban the Box: An Equal Playing Field But More Regulations for Employers."

### NEW YORK REAL ESTATE JOURNAL

**William F. Bonesso** was featured in the Year in Review Spotlight section. He answered the question, "What was your most notable project, deal, or transaction in 2017?" **Aaron Gershonowitz's** recent article, "State Environmental Quality Review Act," was published.

*(cont'd from cover)*

ILIT, but the insured must survive the three-year anniversary of the transfer for the policy proceeds to be excluded from his or her estate. Generally, the insured will provide the funds to the trust and permit the trust to pay the premiums on the

insurance policies. The money contributed to the trust for the payment of insurance premiums is treated as gifts to the beneficiaries. If the gifts exceed the annual exclusion amount (\$15,000 as of 2018), gift tax returns are required to be filed.

## AWARDS, PRESENTATIONS & EVENTS

**Russell G. Tisman** helped raise over \$360,000 as co-chair of the annual fundraising event for Harboring Hearts, a heart transplant support organization.



*Left to right:  
Robyn Tisman, Actor Anthony Rapp,  
Russell G. Tisman, Esq.*

**Andrea Tsoukalas Curto** was honored by the Long Island Press with the Long Island Power Woman Award.



*Second from left:  
Honoree Andrea Tsoukalas Curto, Esq.*

The Firm's "Long Island General Counsel Network" managed by **Joseph V. Cuomo** co-hosted a CLE seminar with the Association of Corporate Counsel (ACC). **David J. Borkon** was on the panel and the topic was "Managing a Joint Venture In-House."

**Peter B. Skelos** participated in a CLE seminar titled "Gender Diversity in Arbitration and Mediation Selection—Achieving Equality for Women Attorneys in the Courtroom and in ADR," sponsored by the Nassau County Women's Bar Association.



*The Firm selected Toys for Tots to be this year's charitable recipients. John V. Terrana, Esq. (center) with representatives from the Nassau County Assessment Review Commission, which spearheaded the toy drive in Nassau.*

## BOARD APPOINTMENTS

**John V. Terrana** has been named to the Advisory Board of the Mattone Family Institute for Real Estate Law at St. John's University School of Law.

**Daniel P. Deegan** has joined the Advisory Board of Hofstra University's Center for Entrepreneurship.

**Andrea Tsoukalas Curto** has been appointed to serve on the Village of Roslyn Harbor planning board.

**John P. Bues** has joined the Board of Directors of the Cleary School for the Deaf.

**Jane Chen** has joined the Executive Board of Hofstra University's Alumni Diversity Committee.



Long Island Elected Officials help Forchelli Deegan Terrana LLP unveil new name at Firm headquarters in Uniondale.

Left to Right: Suffolk County District Administrative Judge Hon. C. Randall Hinrichs, Nassau County District Administrative Judge Hon. Thomas A. Adams, Hofstra Law School Dean Hon. A. Gail Prudenti, Hempstead Town Supervisor Laura Gillen, Partner Daniel P. Deegan, Nassau County Executive Laura Curran, Suffolk County Executive Steve Bellone, Partner John V. Terrana, Managing Partner Jeffrey D. Forchelli, Congressman Thomas R. Suozzi, Oyster Bay Councilman Louis Imbroto, Oyster Bay Councilwoman Michele Johnson

## REAL ESTATE

**Brian R. Sahn** represented clients in the \$4.1 million sale of a multi-family building in Brooklyn.

**Daniel S. Dornfeld** and **Elbert F. Nasis** represented Gator Hillside Village, LLC, the owner of a shopping center in Smithtown, NY, regarding a real estate broker dispute. The client had entered into a lease with an operator of a Moe's Southwest Grill. The broker made a proposal that included an obligation for the client to pay a brokerage fee on a certain rate, which the client rejected. The client made a "take it or leave it" counteroffer to pay a 5 per cent commission on the first five years of the lease. After signing the lease, the broker sent an invoice for the full commission initially demanded. The client refused to pay and directed that we sue the broker for a declaratory judgment to determine the proper commission. The Supreme Court granted our motion declaring that the brokerage commission should be the amount our client offered to pay and the Second Department confirmed the decision.

**Joseph P. Asselta** and **Daniel S. Dornfeld**, along with **James C. Ricca** and **Lindsey E. Mesh**, represented a client in its acquisition of an 18-acre asphalt plant on Long Island. The transaction included over six selling entities, three lenders, including Valley National Bank and HSBC, ten different parcels, and various equipment. The firm also handled the formation of various corporate entities and the leasing of the premises.

**Brian R. Sahn** represented the owners of an apartment complex in Eagle Pass Texas, in the Fannie Mae refinance of its permanent loan.

## TAX CERTIORARI

**John V. Terrana** and **Robert L. Renda** prosecuted a tax certiorari matter for a large regional shopping center in Nassau County. In negotiations with the county review commission and legal counsel, Messrs Terrana and Renda established tax reductions relying on a mix of market data and actual property performance. The result was a resolution worth approximately \$900,000.

**Nicole S. Forchelli** represented a Fortune 500 company for a retail property in Rockland County. In proceedings at State Supreme Court, Ms. Forchelli established that the village over-valued the property by \$4,000,000 and thus severely over-charged the property taxes. The result was a settlement with the village which reduced the client's tax bill by almost half.

The IDA, Tax Certiorari, and Litigation practice groups coordinated in representing a client who was suffering from a duplicative double-charge in taxation. **Daniel P. Deegan** represented the client in entering into an agreement with a local IDA, securing over \$400,000 in municipal benefits, as the client was undertaking a substantial local investment and employment increase. At the same time, **Douglas W. Atkins** negotiated the client's tax certiorari proceedings so that its real property was not over-taxed in the first place. **Nathan R. Jones** prosecuted an Article 78 State Supreme Court proceeding to prevent the tax levying jurisdictions from simultaneously charging property taxes and payments in lieu of taxes (PILOTs). Through this collaboration of several Forchelli practice groups, the client was protected from over-taxation and was able to continue its local economic expansion.

## LITIGATION

In an action brought by a patent owner/licensor seeking royalties potentially in excess of \$200,000,000 under a perpetual license for business method patents, which the Firm contended were unenforceable under recent U.S. Supreme Court precedent, **David A. Loglisci** successfully appealed a trial court's award of summary judgment against his client. His appellate victory led to a favorable settlement for his client, saving it millions of dollars in claimed royalties.

## CONSTRUCTION

**Joseph P. Asselta**, with the assistance of **Raymond A. Castronovo**, obtained a seven-figure arbitration award in favor of a contractor in connection with a power plant project in New York City based on a

wrongful termination of the contract by the project owner. The five reasons given by the project owner to justify termination of the contract were rejected by the arbitrator who ended up awarding the contractor the amounts owed for base contract and change order work performed plus the contractor's lost profits on the remaining contract work it was prevented from performing as a result of the wrongful termination. The owner's counterclaim for its additional costs to complete the work was also rejected in its entirety.

## BANKING

**James C. Ricca** negotiated and closed a \$13,850,000 mortgage loan on behalf of New York Community Bank, secured by seven multiple tenant commercial/ industrial buildings on four different properties, located in Ronkonkoma and Hollbrook, Suffolk County, New York.

**James C. Ricca** negotiated and closed a \$8,600,000 mortgage loan on behalf of an institutional lender, secured by a mixed-use Planned Community Condominium Development in a six-story building located in Philadelphia, PA, and comprised of one commercial unit on the ground floor and one residential unit with forty-one residential apartments.

**Frank R. Davis** and **John P. Bues** successfully negotiated and advised on behalf of Firm client a \$10,000,000 first mortgage loan and a \$4,000,000 first construction loan for a build-out of commercial "incubator" space on property located in Westbury.

## ENTERTAINMENT & SPORTS

**Anthony V. Curto** and **Joseph V. Cuomo** represented long-time Firm client Joy Mangano in connection with an agreement with producer Ken Davenport to produce a musical based on her life story. Ms. Mangano is a serial inventor and entrepreneurial legend. Mr. Davenport is Broadway's hottest and most innovative producer and is best known for producing *Kinky Boots*.



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## FIRM ADDITIONS



**Jonah H. Blumenthal** is an associate in the Tax, Trusts and Estates practice group. He concentrates on developing and implementing estate and tax planning strategies and documents, including wills, revocable and irrevocable trusts, powers of attorney, and health care proxies.



**Jane Chen** is an associate in the Corporate and Real Estate practice groups. Prior to joining the Firm, she served as a law clerk at a national bank, where she drafted and reviewed lease agreements, vendor contracts, corporate policies, and correspondence to governmental, regulatory, and third-party entities. She is fluent in three Chinese dialects.



**Jessica A. Leis** is an associate in the Land Use and Zoning practice group. Prior to joining the Firm, she was an Assistant County Attorney in the Tort Division of the Suffolk County Attorney's Office.



**Kristin McGrath Seibert** is an associate in the Employment and Labor practice group. Prior to joining the Firm, she was a Law Clerk for Hon. Joanna Seybert of the U.S. District Court in the Eastern District of New York.



**Erik W. Snipas** is an associate in the Land Use and Zoning practice group. Prior to joining the Firm, he was an Assistant District Attorney in the Queens County District Attorney's office.