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ARTICLES

The Tax Treatment of Verdicts and Settlements Following the Adoption of the Jobs Creation Act of 2004: Paradise Found for the Employment Lawyer?

John F. Fatino.....1

In recent years, attorneys practicing in the employment area have found that a working knowledge of tax law is critical to maximize results for clients and to avoid malpractice. This article will examine the status of taxation of verdicts and settlements following adoption of 1996 legislation, which made various changes to the Internal Revenue Code. In addition, the article will examine the impact that the American Jobs Creation Act has had on the tax treatment of attorney fees and court costs in the context of employment litigation. Finally, the article will discuss the implications of a recent decision by the United States Court of Appeals for the D.C. Circuit concerning the unconstitutionality of the taxation of verdicts and settlements involving emotional distress and loss of reputation.

Apparent Authority and Healthcare in Illinois – Revisited

Marc. D. Ginsberg and Patricia C. Nowak.....11

This article discusses the recent Illinois Supreme Court decision, York v. Rush Presbyterian St. Luke's Medical Center, *which addressed the reliance element in the overall analysis of apparent authority in the healthcare context in Illinois. The authors explore the historical underpinnings of agency law and posit that the* York *decision has effectively eroded basic agency law principles in the healthcare context.*

The Lasting Viability of *Rasul* in the Wake of the Detainee Treatment Act of 2005

Joseph R. Pope.....21

This article examines the jurisdictional features of the newly enacted Detainee Treatment Act of 2005 and the Supreme Court's Hamdan v. Rumsfeld *decision as it relates to the retroactive application of the Act. In particular, the article considers the impact of the Act on the Supreme Court's earlier* Rasul v. Bush *decision and considers*

whether the statute, as interpreted by the Court in Hamdan, *successfully abrogated that controversial decision or leaves certain unintended infirmities untreated. The article explores the Congressional history of the Act and explains how that history supported the Supreme Court's ultimate conclusion in* Hamdan *that Congress failed to divest the federal courts of their jurisdiction to hear habeas corpus petitions brought by the detainees as granted to the Courts by* Rasul. *The article concludes that the primary holding of* Rasul, *that foreign detainees can petition for habeas relief outside the territorial jurisdiction of the United States, remains largely intact.*

The Illinois Supreme Court Gives Policyholders a Break from the Two-Front War

John S. Vishneski III.....35

For many years, Illinois policyholders faced the prospect of a two-front war whenever they submitted a liability insurance claim. Insurers who did not believe they owed coverage could "honor" their duty to defend by filing a lawsuit against their insureds seeking a declaration of non-coverage, thereby forcing their policyholders to defend against the underlying claim and against their own insurer. The Illinois Supreme Court, in the Midwest Sporting Goods *case, has brought the two-front war era to an end. As explained in this article, insurers in doubt over coverage must now at least pay their policyholders' defense costs in the underlying claim until they secure a declaration of non-coverage.*

COMMENTS

Self-Exclusion and the Compulsive Gambler: The House Shouldn't Always Win

Justin E. Bauer.....63

This comment examines the law revolving around a compulsive gambler's ability to exclude himself from a casino. While the current state of the law in many jurisdictions properly allows a person to place himself on a "self-exclusion list," in an effort to be barred from entering into a casino, the law provides no remedy for the self-excluded gambler in the event that the casino negligently, deliberately, or even recklessly allows the self-excluded person to gamble. This comment calls for a change to that jurisprudence and invites the judiciary to allow a self-excluded gambler to receive redress from the casino that does not uphold its promise of exclusion.

Protecting the Most Vulnerable Victims: Prosecution of Child Sex Offenses in Illinois post *Crawford v. Washington*

Jennifer A. Lindt.....95

This comment examines the prosecution of pedophiles in Illinois after the United States Supreme Court's decision in Crawford v. Washington. *The prosecution of pedophiles had frequently involved the use of extra judicial statements by victims to protect them from re-victimization after testifying at trial. The ability to use a statutorily mandated hearsay exception has been in question and is directly linked to the definition of the term "testimonial." The author provides a test to determine whether the out of court statements by pedophilia victims are "testimonial" to make this tool for protecting the victims still viable.*