KOLEY JESSEN

# CLIENT ADVISER

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## Editor's Note

Dear Clients, Colleagues, and Friends:

This Fall is the time to get back to some regular routines, such as back-to-school, football and other fall sports, cooler temperatures, shorter daylight hours, and also, of course, semi-routine matters such as a presidential election. Clearly, there is no shortage of activities and headline-grabbing news items to keep you occupied every day. Despite other demands on your time, we hope you find some time to peruse the articles in this edition of the *Client Adviser* and, as always, if you need any additional information, please feel free to contact us.

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## The Impact of Same-Sex Marriages on Employee Benefit Plans

by Julie A. Schultz

On May 15, 2008, the California State Supreme Court held that a state law prohibiting same-sex marriage violated the state's constitution. As a result of this decision, same-sex couples can legally marry in California. California now joins Massachusetts as the only two states (as of the time this article went to press) to authorize and recognize same-sex marriages. Conversely, forty-four states currently have laws that prohibit same-sex marriages, including 26 states with constitutional amendments defining marriage as between a man and a woman. California, unlike Massachusetts, does not have a residency requirement for marriage. Thus, same-sex couples from any state may travel to California and marry. States now struggle with whether such marriages, legally valid in California, must also be recognized in the couple's home state.

In light of the California ruling, employers in states outside of California, including Nebraska, are now questioning whether they are required to provide employee benefits, previously provided only to the opposite-sex spouses of their employees, to the same-sex spouses. Currently, Nebraska employers who do not have employees in California or Massachusetts are not required to provide identical benefits to same-sex couples. However, the law in this area continues to develop and evolve.

At this time, Nebraska does not legally recognize same-sex marriages performed in other states. In 2000, Nebraska amended its Constitution to provide, "[o]nly marriage between a man and a woman shall be valid or recognized in Nebraska. The uniting of two persons of the same sex in a civil union, domestic partnership, or other similar same-sex relationship shall not be valid or recognized in Nebraska." Although the amendment was initially challenged and ruled unconstitutional by a lower court, the Eighth Circuit Court of Appeals ultimately upheld the amendment. Nebraska's amendment is not subject to a legal challenge similar to that in California because Nebraska went through the formal process of amending its state constitution. Additionally, although states are generally required to recognize marriages performed in other states under the Full Faith and Credit Clause of the United States Constitution, the federal Defense of Marriage Act ("DOMA"), enacted in 1996, allows states to refuse to recognize same-sex marriages performed

in other states. Accordingly, under its Constitution and DOMA, Nebraska does not recognize same-sex marriages performed in California or Massachusetts as legally valid. As such, employers cannot be required to provide non-federal employee benefits to the same-sex spouses of their employees.

Also, Nebraska employers are not required to offer the same-sex spouses of employees federal benefits. This includes "traditional" employee benefits, such as health care benefits. The federal DOMA defines marriage as between a man and a woman, therefore, the Employee Retirement Income Security Act ("ERISA") and the IRS Tax Code are interpreted and applied under this definition. This means that employers cannot be forced to recognize same-sex marriages in order to comply with ERISA and IRS requirements. To the contrary, employers who voluntarily offer federal benefits to same-sex spouses cannot claim the various tax benefits associated with qualified plans. Under DOMA and ERISA, these spouses are not considered "eligible participants." Accordingly, if an employer chooses to provide these benefits, it must inform itself and its employees of the tax consequences. Importantly, for federal tax purposes, the fair market value of benefits provided to a same-sex spouse must be included in an employee's income and cannot be paid for with pre-tax income.

Although Nebraska employers are not required to offer employees same-sex spouse benefits, they should still examine their policies to determine how marriage or eligible beneficiaries are defined. Most plans fail to include any sort of definition for terms such as "spouse." The failure to include any type of definition exposes an employer to potential employee relations issues as employees may attempt to secure benefits for a same-sex spouse. Additionally, multi-state employers may be forced to expand non-federal benefits to employees in those states that recognize same-sex marriage. This creates inconsistencies in the employer's policy which may encourage the employer to expand same-sex benefits to all employees.

Employers always have the option of extending benefits to same-sex spouses even if their state does not legally recognize the marriage or require the benefits. Decisions related to an employer's benefit plans can be complicated, with significant legal consequences. If you have any questions or would simply like to know more about the impact of same-sex marriages on employee benefit plans, please contact a member of Koley Jessen's Employment, Labor, and Benefits Practice Group. ■

## Liability of Landowner When Tree Falls onto Adjoining Landowner's Property

by Max J. Burbach

One issue that frequently arises between adjoining landowners is responsibility when one landowner's tree falls onto the property of the adjoining landowner and damages either the adjoining landowner's property or person. In general, a landowner is not liable for harm caused to others outside of his land by a natural condition occurring on his land. This article discusses this situation and how courts currently interpret this issue.

Generally, a landowner is not liable for physical harm caused to others outside of his land by a natural condition occurring on his land. "Natural condition of the land" includes the natural growth of trees, weeds, and other vegetation upon the land. However, a landowner may be subject to liability to people using a public street for physical harm resulting from the landowner's failure to exercise reasonable care to prevent unreasonable risk of harm arising from the condition of trees on his land near the street.

If a landowner has reason to know that a public nuisance caused by natural conditions exists on his land near a public roadway, the landowner may be subject to liability for failure to exercise reasonable care to prevent an unreasonable risk of harm to those using the roadway. Generally, a landowner has no duty to inspect trees for the purpose of discovering a dangerous natural condition. However, if the landowner knows of the condition, or has reason to know of it, he has a duty to act reasonably to remove the dangerous condition. To illustrate, assume that Bob owns a home on property adjacent to a heavily traveled highway, and a tree on Bob's property next to the highway is struck by lightning and killed. Bob does nothing to remove the tree, though he sees it every day. Over a year later, the tree falls on Jane's car, severely damaging it. Bob is subject to liability to Jane.

Courts in several states increasingly examine liability based on ordinary negligence principles to determine a landowner's liability for harm caused by a condition on his land. In addition, several states have adopted other theories of liability for these situations, such as nuisance, trespass, and strict liability.

The Omaha Municipal Code states that it is unlawful for any landowner to allow to stand on his property any dead tree, any dead part of a tree, any fatally diseased or structurally weak tree, or any structurally weak part of a tree which is a menace to public safety, or which endangers any building or other property. In one case, the Nebraska Supreme Court, applying this section of the Omaha Municipal Code, did not apply a theory of strict liability, but rather applied ordinary principles of negligence. In that case, a person was driving his car during a storm when he stopped his car due to high winds and rain, and a large limb from a tree struck his car, crushing and paralyzing him. The trial court awarded the Plaintiff monetary damages, finding that the City was negligent in failing to inspect the tree for disease and decay, thereby violating the City ordinance. In reversing the trial court's decision and dismissing the action, the Nebraska Supreme Court stated that the City had no actual knowledge of the condition of the tree and, therefore, the Plaintiff was required to prove that the City had constructive notice or knowledge of the condition of the tree. The court stated that the fact that a tree falls does not by itself prove negligence on the part of the owner. The Nebraska Supreme Court adopted the rule that negligence is the standard to be judged in these situations, and just because a tree falls does not mean that a defendant failed to exercise reasonable care.

"...in order for a landowner in Nebraska or Iowa to be liable for damage caused by a falling tree to an adjoining landowner's property, that landowner must have had actual or constructive notice that the tree was decayed or otherwise in a defective condition."

Iowa similarly applies a standard of negligence when determining liability in these situations. The Iowa Supreme Court has stated that the rule in Iowa is that an individual who maintains a tree on his property owes a duty to avoid injuring persons on adjoining premises by permitting a tree to become so defective and decayed that it will fall and cause damage on the adjoining property. Further, the Iowa Supreme Court has stated that proof of a landowner's actual or constructive knowledge of decay or defect is a condition precedent to liability. The Iowa Supreme Court has stated the general rule that a landowner has a duty to use reasonable care to prevent unreasonable risk of harm to an adjoining landowner from diseased or otherwise unsafe trees.

Both Nebraska and Iowa hold that a landowner has a duty of reasonable care to correct the hazards of a defective or decaying tree on the landowner's property. However, in order for a landowner in Nebraska or Iowa to be liable for damage caused by a falling tree to an adjoining landowner's property, that landowner must have had actual or constructive notice that the tree was decayed or otherwise in a defective condition. Therefore, if an otherwise healthy tree falls onto a neighbor's yard during a storm, for example, the tree's owner will generally not be liable for any damages because the tree was not in a defective condition. Additionally, even if a tree that is determined to have been decayed or defective falls onto a neighbor's yard, the tree's owner will only be liable for damages if the owner knew the tree was defective or should have known through reasonable inspection that the tree was defective. For further information or if you have any questions, please feel free to call one of the attorneys in our Real Estate, Environmental and Natural Resources Law Group. ■

## Exculpatory Contracts (Not Responsible For Accidents, Injuries, Death, Or Damages)

by J. Daniel Weidner

Mom and Dad pack up the family minivan, load little Billy and Suzy inside, and hit the road for the family trip to Arkansas. Once they arrive in Arkansas, Mom and Dad start looking for the nearest white water resort. Unfortunately, the nearest white water resort is the less than reputable "Cletus' Two Tooth White Water Rafting Excursions." Although the name of the resort causes apprehension in both Mom and Dad, they collectively decide to book a white water rafting trip with Cletus' Two Tooth White Water Rafting Excursions due to the proximity of Cletus' to the family hotel and the extremely reasonable prices. Before taking the family white water rafting, Cletus asked Mom and Dad to sign an exculpatory contract releasing Cletus' Two Tooth White Water Rafting Excursions from any and all liability for any bodily

injuries, accidents, death, or damages that may result from the white water rafting excursion. Cletus tells Mom and Dad that the contract is just something he found on the internet and it helps him keep his insurance rates down. Therefore, Mom and Dad barely read the contract but sign it anyway figuring, "What's the worst that could happen?"

After signing the contracts, Mom, Dad, little Billy, and Suzy throw on some life jackets and jump into a duct tape patched raft with tour guide Two Tooth Cletus. While out on the river, Cletus and the family encounter some very rough waters, and Mom and little Billy are ejected from the raft. Little Billy breaks his arm and Mom lands on a boulder, shattering her pelvis. Fortunately for Mom and little Billy, Cletus is able to pull both of them from the water and into the raft. Cletus then proceeds to take them to the nearest hospital where both receive adequate treatment but incur significant medical bills and additional expenses associated with their post-injury rehabilitation.

A few months later when conferring with a local white water rafting expert, Dad starts thinking that Cletus' actions in navigating the boat were probably negligent. Therefore, Dad considers suing Cletus' Two Tooth White Water Rafting Excursions. However, Mom reminds Dad of the exculpatory contract that they signed whereby Mom and Dad released Cletus' Two Tooth White Water Rafting Excursions from any and all liability for any bodily injuries, accidents, death, or damages that may result from the white water rafting excursion. The question that must first be answered is: Did the contract effectively waive Mom and Dad's ability to recover damages from Cletus' Two Tooth White Water Rafting Excursions?

Exculpatory contracts such as the one Mom and Dad signed create conflict between two distinct legal concepts: (i) the freedom to contract, and (ii) the proposition that the public well-being is not served by the avoidance of the consequences of wrongful actions. Therefore, courts take various approaches when interpreting the enforceability of an exculpatory contract. The general rule is that exculpatory contracts where one party is exempted from liability for its future negligence are valid. In fact, a well-written exculpatory contract that is voluntarily signed by a legally competent adult will generally protect a service provider from liability for negligence. However, there are certain states that prohibit exculpatory contracts altogether or apply much stricter standards than others. Moreover, in almost every state, clauses limiting future liability are strictly construed by courts against the party seeking the benefit of the clause.

When determining whether an exculpatory contract is effective and enforceable, courts look at a number of factors. Among those factors, whether the language in the exculpatory contract is unambiguous and understandable is most relevant. For an exculpatory contract to be effective, the intentions of the parties with regard to the exculpatory provision in the contract must be delineated with the utmost particularity and the clause must effectively alert the releasing party that he or she is releasing the other party from claims arising from that party's own negligence.

Therefore, service providers should use plain and simple words that clearly indicate to individuals of average intelligence that the document they are signing constitutes a waiver of any claims for future personal injuries. The service provider should then specify with particularity the conduct that the parties intend to be covered by the waiver and release. In fact, a pre-injury release will not cover negligence if it neither specifically enumerates negligence, nor contains any other language that could relate to the negligence.

In addition to ensuring that the release language is easy to understand, service providers should do their best to attract attention to the release language. Courts suggest using bold faced type, all capital letters, increased type size, underlining, or even different colored print. Although it may seem odd, the labeling of the document is also an important factor when determining whether an exculpatory contract is enforceable. In this regard, courts suggest labeling the document something like "General Release and Covenant Not to Sue" or "Unconditional and Full General Release and Covenant Not to Sue." Such a title should provide ordinary persons untrained in the law with enough information to fully comprehend the significance of the document they are signing.

Although exculpatory contracts are generally enforceable and effective, there are certain situations where the law prohibits them. An individual may not contractually exculpate himself from liability for certain conduct amounting to "gross" negligence, reckless and intentional conduct, or willful and wanton conduct. Therefore, if an exculpatory

contract purports to release an individual from gross negligence, reckless and intentional conduct, or willful and wanton conduct, the contract will be void as a matter of law.

An exculpatory contract that violates public policy will also be considered void as a matter of law. For example, some states have statutes that specifically prohibit the use of exculpatory contracts in certain situations, such as: (a) innkeepers contracting to limit liability for negligence, (b) bailees for hire, such as dry cleaners or parking garages, exempting themselves from liability for a violation of a legal duty, or (c) a hospital or healthcare facility limiting liability for negligence.

Exculpatory contracts may be enforceable in certain situations. However, they must be carefully drafted, contain appropriate language, and must be easily understood by a person of average intelligence untrained in the law. With respect to Mom and little Billy's injuries, Mom and little Billy might be able to sue Cletus if (i) the exculpatory contract violated public policy, (ii) Cletus' steering of the boat was grossly negligent, or constituted willful and wanton, or reckless and intentional conduct, or (iii) the contract was ambiguous and difficult to understand. The enforceability of an exculpatory contract is a fact-specific analysis that depends on the language in the contract and the parties involved. If you have any questions, please call one of the attorneys in our Litigation and Trial Practice Group. ■

## Estate Planning 101 – Intro to Basic Estate Planning Documents

by Alexander J. Wolf

In its broadest sense, estate planning involves the accumulation and preservation of wealth during life and the thoughtful transfer of assets both during life and at death. Estate planning can range from something as simple as ensuring that assets are properly titled, to something as complex as establishing a charitable entity to carry out charitable objectives. Nevertheless, virtually every estate plan begins with a foundation of basic estate planning documents. At Koley Jessen, creating this foundation typically involves the use of four documents: (i) a Last Will and Testament; (ii) a revocable Trust Agreement; (iii) a Durable Power of Attorney for financial/property affairs; and (iv) an Advance Directive (also known as a Health Care Power of Attorney/Living Will for health care matters). This article is part one of a two part series intended to serve as a general description of the purpose and function of each of these documents. In this article, the Last Will and Testament and revocable Trust Agreement will be discussed. The second article, appearing in the next edition of the Client Adviser, will address the Durable Power of Attorney and Advance Directive.

**Last Will and Testament.** The Last Will and Testament controls the disposition of your "probate estate," which would include all assets owned in your individual name at the time of your death and not otherwise disposed of by a beneficiary designation. Koley Jessen recommends the use of what is commonly referred to as a "pour-over will." A pour-over will provides that all assets of your probate estate are "poured-over" upon your death into a previously-established living trust (see discussion below). The assets would then be held, managed, and disposed pursuant to the terms of the Trust Agreement.

The Last Will and Testament also gives you the ability to appoint a Personal Representative and, if appropriate, a guardian and a conservator for any minor children. The Personal Representative is the person you select to administer your probate estate upon your death. The Personal Representative is responsible for (i) identifying, inventorying, and protecting your probate assets; (ii) paying administrative expenses and allowable claims against your estate; (iii) preparing and filing any applicable tax returns; and (iv) distributing the remaining assets to your revocable Trust.

A guardian is one or more individual(s) appointed to care for the person of your minor children (in Nebraska, an individual is a "minor" until he/she attains age nineteen), if any, in the event you are unable to care for them. A conservator, on the other hand, is one or more individual(s) appointed to care for the financial affairs of your minor children, if any, in the event you are unable to do so. Either an individual or a couple may be appointed as guardian or conservator, and although they are completely separate fiduciary roles, often the same individual(s) will serve as both guardian and conservator.

**Revocable Trust Agreement.** Simply put, a trust is a separate legal entity that is used to hold, manage,

and distribute assets for the benefit of identified beneficiaries. A person named the "trustee" is authorized to act on behalf of the trust, much like the president of a corporation is authorized to act on behalf of the corporation. The primary purpose of a trust is to provide a vehicle for managing and distributing assets for the benefit of one or more beneficiaries.

A trust may be created at death by a decedent's Last Will and Testament (a "testamentary trust") or during life through the execution of a trust agreement (a "living trust"). A trust established during life can either be "revocable," meaning it can be amended or revoked at any time by the trust's creator, or "irrevocable," meaning that the trust cannot be changed or revoked by the trust's creator. A testamentary trust springs into existence only upon the death of the "testator" (i.e., the person whose Will creates the trust), but has no legal significance until such time and is irrevocable from the moment it exists. On the other hand, a living or revocable trust exists immediately after the trust creator's execution of the trust agreement and may own and manage assets during the trust creator's life. Despite the fact that a revocable trust is a separate legal entity that can take title to assets, it is not a separate entity for tax purposes during the creator's lifetime. In other words, no separate tax identification number or tax return is necessary for the trust while the trust creator is alive. If the trust is "funded" (i.e., assets are transferred into the trust), any income earned by the trust during the creator's life is merely reported on the creator's income tax return.

Both a Will (i.e., for a testamentary trust) and revocable trust agreement can be drafted to: (i) provide for the management and thoughtful disposition of assets, (ii) provide creditor protection for beneficiaries, and (iii) allow a great degree of flexibility in dealing with unforeseen circumstances that may arise, such as the untimely death of a trust beneficiary. Despite these similarities, a revocable trust provides additional benefits not available with a testamentary trust. It is because of these additional benefits (discussed below) that estate planning attorneys at Koley Jessen almost universally recommend revocable trusts to our clients.

First, a revocable trust is a great tool for the long-term management of your assets in the event of your incapacity. If you become incapacitated during your life, your assets may be transferred to your trust and the trustee will manage these assets for your benefit (and even the benefit of your spouse and dependents) until your death.

Second, a revocable trust provides a potential vehicle for avoiding "probate," which is a legal proceeding in which a court oversees the distribution of a deceased person's estate. Fully "funding" your trust (i.e., so that you own and control all applicable assets as Trustee under the trust agreement, instead of in your individual name) can allow you to avoid the time and expense of a probate proceeding. Depending on your particular facts and circumstances, these cost and time savings may be relatively insignificant or could be fairly substantial.

Finally, a revocable trust may give you an added layer of privacy. In the event your estate is subject to probate, your Will must be filed with the court in your county of residence and will be made part of the public record. Thus, if your Will contains a testamentary trust, virtually any person can gain access to it and see the identity of your beneficiaries, the property you left to them, and the terms of such disposition. On the other hand, because a revocable trust does not normally need to be filed with the court, someone wanting to look at your Will merely will find a clause pouring-over all of your assets to your revocable trust. Note, however, that in some States, including Nebraska, this privacy benefit is somewhat impaired due to the fact that an inheritance tax return must be filed with the appropriate county court (i.e., of public record) which lists the value of your estate upon your death (i.e., excluding life insurance which is not payable to your estate), identifies each of your beneficiaries and sets forth the gross value of the assets received by each of them.

Whether or not you transfer your assets to your revocable trust during your lifetime, when used in conjunction with your pour-over will, your trust will serve as the primary means of disposing of your assets following your death. The combination of these two tools allows you tremendous flexibility in drafting an estate plan tailored to your specific needs and desires. In the next edition of the Client Adviser, we will examine the Durable Power of Attorney and Advance Estate Directive. If you have any questions in the mean time, please call me or any of the attorneys in our Estate Planning and Business Succession Practice Group. ■

## Last Year For Transition Relief Under Section 409A

by Joan M. Cannon

Internal Revenue Code Section 409A is that obscure, little, federal law that has forever changed the rules and how we view deferred compensation. This Section and the Internal Revenue Service's transitional rules and final regulations have given us clearly defined rules governing deferred compensation and the penalties for noncompliance. This is the last year that an employer can use the IRS transition rules; they will not be available next year or later.

IRS guidance on the application of Section 409A tells us that any deferred compensation subject to Section 409A must be in writing by December 31, 2008, and that the plan providing the deferred compensation must be administered in compliance with Section 409A in 2008 and later. Deferred compensation under Section 409A may include bonuses, fringe benefits, expense reimbursement arrangements, non-qualified deferred compensation agreements, employment agreements, tax gross-up arrangements, buy-sell agreements, stock option/stock appreciation rights plans, severance agreements, and separation agreements. Noncompliance with Section 409A, such as a plan document failure or an operational noncompliance, means that the deferred compensation from all prior years and the current year are includible in gross income for the current year and are subject to a 20% tax penalty, plus interest at the underpayment rate plus 1%.

> "...now is an opportune time to communicate the plan terms and changes to key employees. Perhaps this is an opportunity to turn the record-keeping of the plan over to a third-party administrator so key employees have immediate access to account balances."

Because of the broad application of Section 409A, employers should review any agreement with employees or independent contractors that has a potential of deferring compensation earned in one tax year until a later tax year. Any agreement that may be subject to Section 409A should be reviewed thoroughly to determine if any amendments are needed to bring the agreement into compliance with Section 409A. The transition rules may still be used this year to allow a change in the form and timing of a payout from the agreement. Such a change can significantly impact tax consequences to key employees in later years.

Although the deferred compensation rules have changed, there are many benefits from the passage of Section 409A and the final regulations. First, having defined rules is better than relying on a few court rulings and allows us to create plans that we know are in compliance with the rules. Second, although the rules are complex, the plans can be as simple or as complex as an employer wants such plans to be. Third, deferred compensation is still a very viable tool to provide for retirement planning, recruiting, and retention of key employees.

The transition rules provide an opportunity to reform existing arrangements in order to eliminate unattractive or inflexible plan features, to create more flexible plan features, or even to terminate a plan that has lost its purpose or feasibility. Deferred compensation plans for key employees can be fine-tuned and tailored for the participant. A rabbi trust can be added to provide some security for the key executives and allow the employer to set aside funds to help meet the company's financial obligations. Finally, now is an opportune time to communicate the plan terms and changes to key employees. Perhaps this is an opportunity to turn the record-keeping of the plan over to a third-party administrator to provide participant statements, online access, and participant directed investments, so key employees have immediate access to account balances.

Bringing deferred compensation arrangements into compliance with Section 409A requires expertise, experience, and a proven work product. It is a whole new game now with deferred compensation; one that's exciting, varied, flexible, and practical. Please call us if you have any questions or would like any additional information on the transition rules available in 2008. ■

## ANNOUNCEMENTS

### Welcome

We are pleased to welcome **Brian J. Koenig** to Koley Jessen as a litigation associate. Brian recently completed a judicial clerkship with the Honorable John F. Wright of the Nebraska Supreme Court. He is a graduate of Simpson College in Indianola, Iowa and received his law degree *cum laude* from Creighton University School of Law, where he served as Editor-in-Chief of the *Creighton Law Review*.

We are also pleased to announce that **Kristin M.V. Farwell**, **Jennifer E. Germaine, David A. Goeschel, Joshua K. Norton, and E. Karine Sokpoh** have joined the Firm as new Associates. Kristin graduated with high distinction from the University of Nebraska College of Law and is practicing with the Litigation practice group. Jennifer graduated *cum laude* from Creighton University School of Law and has joined the Business/General Counsel practice group. David graduated *cum laude* from Creighton University School of Law and has joined the Business/General Counsel, Intellectual Property, and Health Care practice groups. Josh graduated from the University of Nebraska College of Law and has joined the Business/General Counsel practice group. Karine graduated *magna cum laude* from Creighton University School of Law and has joined the Intellectual Property practice group.

### Congratulations

Congratulations to **Thomas F. Ackley** for graduating from the Greater Omaha Chamber of Commerce Leadership Omaha program in June. Tom is a member of Class 30. Congratulations as well to **Julie M. DeWitt** for her selection to Leadership Omaha's Class 31, which will begin this fall.

### Community

On September 19th, Creighton University School of Law held the 2008 James L. Koley Address, which featured keynote speaker Associate Supreme Court Justice Samuel Alito. Additionally, the James L. Koley Scholarship in Constitutional Law was presented to Jonathan Wegner, a May 2008 graduate of Creighton University School of Law.

On Friday, September 5th, Koley Jessen participated in the Literacy Center's First Adult Spelling Bee by entering two teams into the competition. A team of Shareholders comprised of **Max J. Burbach**, **Roberta L. Christensen**, and **John M. Lingelbach** took on a team of Associates consisting of **David A. Yudelson**, **Ryan J. Sevcik**, and **Leilani M. Harbeck** as well as, of course, many other teams. Although neither team took home the prize, a great time was had by all for a great cause.

**Gregory C. Scaglione** and legal secretary **Cindy Mettlen** organization more than 30 Koley Jessen employees and family members to participate in the Brush-Up Nebraska Paint-a-thon on August 9th and August 16th.

**David M. Dvorak** served as co-chairman of the Juvenile Diabetes Research Foundation's Walk to Cure Diabetes on August 9th, which raised more than $1 million for diabetes research. **David R. Mayer** helped lead Koley Jessen's walk team.

**Karla R. Rupiper** has begun a three-year term as President of the Midlands Community Foundation Board of Directors.

KOLEY ■ JESSEN

KOLEY JESSEN P.C., L.L.O.
One Pacific Place · Suite 800 · 1125 South 103rd Street
Omaha, Nebraska 68124
Phone (402) 390-9500 · Fax (402) 390-9005
www.koleyjessen.com

Paul C. Jessen
Michael M. Hupp
Donald L. Swanson †
M. Shaun McGaughey ‡
Michael C. Cox ◊ †
Kurt F. Tjaden
Karen M. Shuler †
Gregory C. Scaglione
Margaret C. Hershiser
Roberta L. Christensen
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