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# A Report of Legal Trends

*David R. Frazer, Editor*

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Ryan  
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Gittler  
Honors  
Founder  
David R.  
Frazer

**F**ifteen years ago when David Frazer, Jim Ryan and Yale Goldberg founded the firm their goal was to provide clients with excellent legal skills, high ethical standards and a comfortable and caring place to visit. As David retires at the close of the year, he has great confidence in the team of lawyers and professionals he and his partners have gathered at Frazer, Ryan, Goldberg, Arnold & Gittler.



**David R. Frazer**

David and his wife Marilyn will be taking the opportunity to visit and enjoy their children and grandchildren in Tucson, Milwaukee, San Francisco, Chicago and Orlando and to travel to new destinations around the world.

As we take a moment to reflect on David's career, we know his guidance, leadership and presence will continue within the firm as a consultant and in the community at large. David was one of the first Certified Tax Specialists in Arizona and served as the first Chairman of the Specialization Committee of the Arizona State Bar. As an attorney, David has achieved the highest possible rating for both his legal expertise and ethical standards. He has received numerous honors and recognition from the Best Lawyers in America, American College of Tax Counsel and American College of Trust and Estate Counsel.

As a community leader, David has succeeded in "making a difference." He has served on The Flinn Foundation Board for thirty-nine years, as well as The Jewish National Fund, The Marshall Fund, The National Conference of Community & Justice, Hillel at ASU, The Southwest Conference of Foundations, The Phoenix Jewish Federation and Saint Luke's Hospital.

When we asked David about his retirement plans, he said "tennis will increase to three times per week, travel will increase plus I have a few new projects on the drawing board to occupy my time."

It is with admiration and gratitude that we wish David good health and happiness as he and Marilyn travel, explore and enjoy their families.

A TRIBUTE TO DAVID FRAZER by Amy Gittler

In November of 1976, I was a senior in law school at Northwestern. I was interviewing in a few select cities around the country, as well as in Phoenix with the law firm where David Frazer was practicing at the time. When I arrived at my interview, David and his colleague greeted me. And shortly thereafter, I received an offer to join the firm.

After I arrived in Phoenix, David and his first wife, Joan, quickly took me under their wing, inviting me often to their home for dinner and holidays. Joan and David became very dear friends, and when I married my husband, Michael, we spent many happy occasions with Joan and David, including our first anniversary floating down the Colorado River.

When Yale Goldberg called me almost two years ago and asked if I was interested in joining what was then Frazer Ryan and Goldberg, I was thrilled for several reasons. The structure fit exactly what I was looking for, and I knew and admired the lawyers.

David, joining what is now Frazer Ryan Goldberg Arnold & Gittler has meant many things to me, but the thing that has meant the most to me, is to have my name on the door with the man who truly opened the door to my career. From the bottom of my heart, I thank you for believing in me twenty-eight years ago, and for allowing me the privilege to add my name to the firm. Nothing symbolizes more in my mind the saying, "All things come full circle." Thank you, David. ■

## Frazer Ryan Goldberg Arnold & Gittler LLP to Host Employer Seminars

by  
Amy J. Gittler  
*Attorney At Law*

We are pleased to announce that beginning in January 2005, we will be conducting a four-part monthly series for clients of Frazer Ryan Goldberg Arnold & Gittler LLP. This comprehensive series will address a variety of issues important to today's employers. It is meant to provide employers with information that will help them navigate through the maze of employment law and employee benefits. There is no charge for the monthly seminars.



**PLACE** Phoenix Country Club  
2901 N 7th Street  
At the intersection of 7th Street & Thomas

### **DATES & TOPICS**

*January 27, 2005: Hiring and Firing: Employer's Rights and Obligations*

*Registration 3:45 pm, Seminar 4:00 - 5:00 pm, Hosted Cocktails 5:00 pm*

*February 24, 2005: Recent Developments in Employee Benefits and Employment Tax Law*

*Registration & Continental Breakfast 7:30 am, Seminar 7:45 - 8:45 am*

*March 31, 2005: Harassment and Discrimination: What Every Employer Should Know*

*Registration & Continental Breakfast 7:30 am, Seminar 7:45 - 8:45 am*

*April 28, 2005: Complying with the Wage and Hour Laws: Navigating the Fair Labor Standards Act*

*Registration 3:45 pm, Seminar 4:00 - 5:00 pm, Hosted Cocktails 5:00 pm*

Space is limited, so please RSVP at least one week prior to each seminar. To RSVP, please contact Laura at (602) 277-2010, or by e-mail at [lfuller@frgaglaw.com](mailto:lfuller@frgaglaw.com). We look forward to seeing you there!

## Respect, Dignity, Autonomy, and Self- Determination

by  
Charles L. Arnold  
*Certified Trust and  
Estate Law Specialist,  
Certified Fiduciary*

These are important ethical principles, all. Yet, when these principles are applied to persons with diminished capacity, they take on an even greater significance.

Recent legislation in Arizona has served to highlight these principles, once again emphasizing the fact that our State often serves as the nation's laboratory in dealing with issues of incapacity.

Guardianship is the legal process through which the Court is asked to appoint a substitute decision-maker for persons with diminished capacity. While our statutes have always permitted the use of creative ways to limit the Court's intrusion, recent legislation now requires the consideration of more limited forms of Guardianship. A person with diminished capacity may need assistance for a limited time, or for only a particular issue, such as a medical consent. Under our new law, before appointing a general Guardian, the Court must first consider more limited measures, and make specific findings that less restrictive judicial intervention would not meet the need.

The use of Advanced Directives, including Mental Health Powers of Attorney, can provide a way of planning for one's own incapacity, by naming an agent to make decisions upon a disability occurring, and further, by providing that agent with a road map of one's wishes

through written declarations. These declarations may relate to obvious health care issues, such as the use of Artificial Life Support, preference relating to organ donation, or any matters that are important to the individual who is doing the directive.

This year, Arizona became the first state in the nation to provide for a Central Registry for Advanced Directives. As of December, 2004, residents of Arizona will be permitted to send their documents to the Secretary of State. The document will then be maintained by that office, and internet access will be provided to all Health Care Providers to whom the patient has given his or her unique password.

The creation of the Advanced Directive Central Registry, the encouragement of less restrictive, more respectful means of judicial intervention, and the active use of specifically designed Powers of Attorney are all ways in which our state recognizes important ethical principles, and makes these principles part of our law.

Be sure to contact your attorney at Frazer Ryan Goldberg Arnold & Gittler to be sure your documents reflect your current thinking, as a way of taking advantage of the opportunities provided by our law.

# Settling Claims Can Be Taxing: Dennis Rodman Settlement Payment For Courtside Kick Is Taxable Income

by  
Yale Goldberg  
*Certified Tax Law  
Specialist*

and

Mike Harsch  
*Attorney At Law*

**A** recent decision by the United States Tax Court involving Dennis Rodman (a member of several of the Michael Jordan-led NBA championship teams) underscores the importance, for tax purposes, of ensuring that settlement agreements resolving personal injury disputes clearly state the intent of the parties settling the dispute.

During a basketball game between the Minnesota Timberwolves and the Chicago Bulls in 1997, Dennis Rodman, who was playing for the Chicago Bulls, landed on a group of photographers and a television cameraman, Eugene Amos, Jr., and twisted his ankle. Prior to returning to the game, Rodman allegedly kicked Amos in the groin. Amos was taken to a medical center by ambulance where he sought treatment for the pain he experienced after being kicked by Rodman. Amos advised the medical center personnel that he experienced a shooting pain to his neck after being kicked; the personnel observed that Amos was able to walk albeit with a limp. While seeking treatment at the medical center, Amos contacted a personal injury attorney who agreed to represent Amos with respect to the incident. After leaving the medical center, Amos filed a police report with the Minneapolis Police Department alleging that Rodman had assaulted him. Amos sought additional medical treatment the next day at a Veterans Hospital.

Six days after the kicking incident, Rodman and Amos executed a settlement agreement that required Rodman to pay Amos \$200,000. In consideration of the receipt of the \$200,000, Amos agreed to release Rodman, the Chicago Bulls, the National Basketball Association and all related parties from all claims arising from the kicking incident. The parties further agreed that (i) Rodman and Amos would not disparage or defame each other, (ii) Amos would not make any additional public statements regarding Rodman and/or the kicking incident or publicize any of the facts or allegations relating to the incident, (iii) Amos would not pursue or cooperate in any criminal investigation concerning the incident (iv) the terms of the agreement were to remain confidential, and (v) if Amos or his attorney committed a material breach of the agreement, Amos was required to compensate Rodman for liquidated damages in the amount of \$200,000. The settlement agreement did not allocate the settlement amount between the claimed physical injuries and nonphysical injury provisions in the agreement.

Amos did not report any portion of the settlement amount in his gross income when he prepared his 1997 income tax return. In general, in the absence of an applicable statutory exclusion, all accessions to wealth are to be included in taxable income. Amos, or his tax representative, determined that the exclusion allowed for damages “received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries and physical sickness” applied to the payment he received under the terms of the settlement agreement. Amos contended that Rodman paid the entire settlement amount to him on account of the physical injuries he claimed he sustained.

The IRS examined Amos’ 1997 income tax return and determined that the entire \$200,000 payment should have been included in his taxable income. The IRS, after reviewing the settlement agreement (which did not express the intent of the parties and/or include an allocation of the proceeds), a declaration from Rodman, and other related facts, determined that the amount Rodman paid Amos was not intended to compensate him for his physical injuries and thus did not qualify for exclusion under the statute.

As a general rule, when a settlement agreement that is arrived at in an adversarial context at arm’s length and in good faith includes an express allocation of the settlement proceeds among the various claims, such allocation will be binding for tax purposes. If the settlement agreement is silent as to the claims of the taxpayer that the settlement agreement was intended to settle, the IRS and courts will look to the intent of the payor to determine the purpose in making the payment. This analysis requires a review of all of the facts and circumstances involved in the dispute. The courts have stated that while the belief of the payee is relevant to the inquiry, the excludability determination hinges ultimately on the dominant reason of the payor in making the payment.

In the Amos case, the Tax Court reviewed all of the facts and circumstances and ultimately determined that the record established that Rodman’s dominant reason in paying the settlement amount was to compensate Amos for his claimed physical injuries. The Court went on to conclude that Rodman paid Amos \$120,000 of the settlement amount at issue on account of Amos’ claimed physical injuries and the remaining \$80,000 of the settlement amount on account of the non-physical provisions in the settlement agreement. As a result, Amos was entitled to exclude only \$120,000 of the settlement amount from his 1997 taxable income.

Had the Amos settlement agreement expressly provided that the entire amount of the settlement payment was to compensate him for his physical injuries and had he been able to demonstrate that the agreement had been negotiated between he and Rodman in an adversarial context at arm’s length and in good faith, he would have had a strong case for asserting that he was entitled to exclude the entire amount of the settlement payment from his taxable income.

This recent Tax Court decision confirms that it is critical for individuals entering into settlement agreements at any stage of a dispute (especially in cases where no complaint is filed setting forth the claims of the injured party) to ensure that the settlement agreements resolving their disputes include a clear expression of the intent of the payor for making the payment and an express allocation of the settlement proceeds among the payee’s various claims. Negotiating these express terms may not always be easy as each of the parties involved in the dispute may have conflicting tax or other motivations in mind when settling their dispute. However, if the agreement is silent on these matters, the individuals allow the IRS and courts to look beyond the agreement, to the subjective intent of the payor, if the IRS challenges the tax treatment of the settlement payment. ■

Attorneys with exceptional  
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