

## Contested Estate Litigation Rising

Successive marriages, step-children, adoptions, and similar matters have increased the presence of “mixed families,” thus creating new challenges for estate planning. But these issues also have led to an increase in contested estate litigation as subsequent spouses, step-children, adoptive children, and others vie for more (and larger) shares of a decedent’s estate. CC&M advises its clients that these realities necessitate addressing the new challenges not only in estate planning itself, but also in anticipating and planning for contested estate litigation.

While the resulting litigation increase is new, the means being used generally are not. Accordingly, more survivors are asserting the same traditional claims against estates and, hence, are raising a greater number of challenges to wills and trusts while also generating more hands to pay and more attorney fees and costs to be borne both by estates themselves and personally by the beneficiaries actually intended by decedents. Today’s world thus requires more attention to detail during the estate planning phase (e.g., as to personal effects) as well as greater efforts to limit, if not preclude, legal challenges to wills and trusts down the road.

Even traditional families are seeing increases in contested estate litigation. Some of the increase appears to result from “entitlement society” offspring believing they should take more for reasons such as being a “favored” child or providing more care than siblings or other relatives in the last years of a decedent’s life. (Indeed, decades-long sibling and other family relationships often disintegrate once an estate is created; no one, even the closest of siblings, ever should assume they will not.) Some of the increase also appears to result from decedents’ elderly siblings living longer and running out of money, seeking to survive by taking estate assets away from decedents’ children.

Regardless of the cause, the same forces that increase the challenges for estate planning also increase the amount of contested estate litigation. CC&M has the expertise to advise its clients in today’s world of not only estate planning, but also in anticipating and planning for contested estate litigation and, ultimately, in contested estate litigation itself.

*by Steven A. Marderosian*



### Clingen Callow & McLean, LLC

Attorneys & Counselors

*specializing in*

general business and corporate law  
commercial litigation  
business and succession planning for family businesses, corporations and limited liability companies  
banking and finance matters  
commercial real estate  
estate planning and settlement  
income, estate and gift tax  
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OF COUNSEL

## FIRM HIGHLIGHTS

**Timothy M. McLean** was appointed legal counsel for the 2300-member DuPage County Bar Association through 2011. He will handle the DCBA's legal needs and advise the Board and Executive Committee each month.

**Steven A. Marderosian** defeated 2 separate motions which sought to dismiss a CC&M client's third-party claims for \$125,000 in unpaid and underpaid rent under a commercial lease.

**Ross I. Molho** was re-certified as a Senior Professional in Human Resources after a rigorous SPHR examination by the HR Certification Institute.

**Colleen M. Healy** and **Virginia Wilkinson** closed the difficult sale of a 4-acre parcel of farmland in Westmont, Illinois, one of the last farms in the area that had been in the George and Helen Van Leeuwen Family for 50 years. Dolores Van Leeuwen thanked CC&M for its "hard work, professionalism, and perseverance" in closing the deal.

**Steven A. Marderosian** obtained a \$25,000 fraud judgment, including attorney fees and punitive damages, regarding a firm client's \$4,000 contract payment to a lobbying firm.

# Practical Legal Concerns When Contemplating a Layoff

Many CC&M clients are asking questions about layoffs and reductions in force (RIFs). The following are the most frequently discussed issues:

## Unemployment Benefits

Illinois employees who are laid off are entitled to unemployment benefits and unless a termination is for "willful misconduct" that employee will receive benefits. Layoffs will affect an employer's UI Tax Contribution Rate which is between .6% and 6.8% of an employer's taxable wage base in 2009. More about this issue may be found at <http://www.ides.state.il.us/employer/uitax.asp>.

## Vacation Benefit

Illinois employers must pay out all accrued but unused vacation time when layoff or termination occurs under the Illinois Wage Payment and Collection Act. This requirement applies whether or not the employee signs a severance agreement.

## Health Insurance Benefits

An employee's health insurance benefits, if any, generally end when their employment ends. Employers with 20 or more employees, however, are covered by COBRA and must inform their employees of the right to continue their health insurance by paying just 35% of the premiums with the employer paying the remaining 65%. This employer subsidy is

relatively new and more information is available on our blog at <http://www.ccmlawyer.com/ccmlawblog/?p=165> Even small employers not covered by COBRA may have certain notification requirements under Illinois Continuation of Coverage law.

## Severance Benefits

Unless an employer has a severance plan, there is no legal right to severance benefits. But many employers elect to provide severance benefits in exchange for an employee signing a severance agreement. Severance agreements should be reviewed by legal counsel because the applicable law is complicated and cumbersome. For precisely this reason, the EEOC recently issued guidance on severance agreements at [http://www.eeoc.gov/policy/docs/qanda\\_severance-agreements.html](http://www.eeoc.gov/policy/docs/qanda_severance-agreements.html).

**WARN** The magic number under the Illinois WARN statute is 25. If your business will be laying off 25 employees or more *and* this number of employees constitutes one-third or more of the full-time employees at the job site, talk to us about your WARN obligations.

CC&M eagerly awaits counseling clients on issues related to growth and tight labor markets. Indeed, those economic conditions might arrive sooner than we expect. Until then, CC&M encourages any business contemplating layoffs or RIFs to consider these issues.

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*by Ross I. Molho*

# Series LLCs Can Help Structure Your Business Ventures

In 2007, Illinois joined Delaware and a few other states in permitting limited liability companies (LLCs) to establish “series” of its members, managers, or limited liability company interests with respect to certain designated assets, properties, or operations of the primary LLC. Each series gets limited liability protection for its operations. Many businesses and practitioners have been wary of using Series LLCs. As the use of Series LLCs is becoming increasingly common, however, now might be the time to consider whether the flexibility they provide can help your business ventures.

There is little uniformity in the rights and privileges of a series among the various LLC laws of states that have authorized Series LLCs. But Illinois Series LLCs offer some structural advantages compared to those of other states, like Delaware. Series of Delaware Series LLCs do not register with the state and are created by contract. Each series in an Illinois Series LLC is treated as a legal entity separate

**Illinois Series LLCs offer some structural advantages compared to those of other states**

from the primary LLC and itself must be registered with the state. This adds to the perception that each series is separate from the other series and the primary LLC, which improves the strength of the limited liability shield.

Beyond significantly lower filing costs, Illinois Series LLCs allow organizational flexibility that the traditional parent-subsidiary structure may not. Ownership of various operations of a business venture can be allocated across many series, while

members and managers of each series also can be different. Enhancing the concept that each series is treated as a separate entity, members of a series of an Illinois Series LLC need not be members of the primary LLC that created the series.

As a new entity, Series LLCs may not be appropriate for all business ventures. But there are many business ventures where this arrangement will be extremely beneficial in structuring transactions. If you have any questions as to whether Series LLCs are appropriate for your business, please call Deven S. Kane at (630) 871-2603.

*by Deven S. Kane*

## MORE FIRM HIGHLIGHTS

**Eric J. Ryan** quickly dismissed a condo association’s claims against a developer for breach of express warranty/fiduciary duty, fraudulent misrepresentation, and consumer fraud.

**Ross I. Molho** presented on-site training to a firm client on HIPAA privacy regulations and addressed the Business Ledger Newsmakers’ Forum on HR, Insurance, and Benefits.

**Steven A. Marderosian** defeated a motion to dismiss a firm client’s parental alienation, defamation, and abuse of process claims against her ex-husband and his wife.

**Deven S. Kane** and **Jean Erhardt** closed a firm client’s purchase of a local fitness facility and a related commercial loan.

**Steven A. Marderosian** chaired a continuing education presentation to the DuPage County Chapter of the American Inns of Court and has been appointed as an officer for next season.

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*This publication is intended for general information purposes only and does not constitute legal advice. Readers should not act upon information presented in this publication without individual professional counseling. Readers may consult with the attorneys at Clingen Callow & McLean, LLC to determine how laws, suggestions and illustrations contained in this publication apply to specific situations.*

Clingen Callow & McLean, LLC

## Practical Legal Concerns When Contemplating a Layoff



**Ross I. Molho**, a partner at CC&M, concentrates his practice in labor and employment law. He is also certified as a Senior

Professional in Human Resources (SPHR).

## WHAT'S INSIDE? *Articles & Contributors*

### Contested Estate Litigation Rising

**Steven A. Marderosian**, a partner at CC&M, concentrates his practice in commercial litigation, corporate law and employment law.



### Series LLCs Can Help Structure Your Business Ventures

**Deven S. Kane**, an associate at CC&M, concentrates his practice in corporate, banking and securities transactional work. Mr. Kane's practice involves the representation of corporations, limited liability companies and their owners.

