

## What's Inside

LOUISIANA DECISION ON SALE OF MINORITY LLP INTEREST ABSENT LIQUIDATION HAS HEALTH CARE PROVIDER IMPLICATIONS..... 1



### LOUISIANA DECISION ON SALE OF MINORITY LLP INTEREST ABSENT LIQUIDATION HAS HEALTH CARE PROVIDER IMPLICATIONS

On April 16, 2008, the Louisiana Third Circuit Court of Appeal upheld a trial judge's application of a 35% minority discount in determining the fair market value of the interest of a partner withdrawing from a limited liability partnership (LLP). It appears that the Supreme Court has been asked to consider this case, but has not yet made a determination of whether to do so. Accordingly, this decision may or may not be final, and although it did not involve a health care entity, it is instructive for health law purposes.

The case, *Cannon v. Bertrand*, CA 07-1278 (La. App. 3 Cir. 4/16/08), 2008 WL 1734158, affirmed the proposition that when a partner withdraws from a LLP absent a liquidation, the determination of the fair market value of his/her interest **may** be determined by applying a minority discount. Because the trial judge has the discretion to apply or not apply a minority discount, those persons affected by a withdrawing partner's payout may be best served by identifying in the partnership agreement the specific manner and logistics of how a withdrawing partner's interest will be determined.

In the *Cannon* case, the primary asset was land used in the sale and harvest of timber. One of the three partners wished to withdraw from the LLP, while the other two wished to continue the business. The parties could not agree on a value of the withdrawing partner's interest. In their legal proceeding, the appellate court cited to Supreme Court case

law for deciding that whether to apply a minority interest is within the trial judge's discretion and should not be disturbed on appeal unless the discretion was abused. This is a deferential standard. The *Cannon* court also distinguished the facts presented to it from a case of the withdrawal of a partner from a professional firm, where value of his/her interest may consist of accounts receivable and income the withdrawing partner "was able to generate through his skill and personality." In such a situation, the value of the withdrawer's interest is "tied to the withdrawing partner's identity" and would be "more separable from the assets created by the remaining partners."

Accordingly, in a health care provider case, and in particular in the case of a potential withdrawing physician or other person whose identity could be said to be tied to the accounts receivable and income generated through his/her skill and reputation, the parties would be well served to spell out in their partnership agreement exactly how the fair market value of a withdrawing partner's (or, for example, LLC member's) or corporate shareholder's interest will be determined.

Linda G. Rodrigue  
225.382.3439  
linda.rodrigue@keanmiller.com

