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To: Clients and Friends

From: The Attorneys at Bove & Langa

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THE BOVE & LANGA REPORT

AND THE MORAL OF THE STORY IS…

Summer is finally here, a brief time in New England when most of us enjoy a day (or two) at the beach with that book (Nook?) we have been hoping to read all year: Money! Family Shenanigans! Sex! You fight that irrepressible urge to toss aside the *Bove & Langa Report* with its *Firm News* and *New Developments* and *Planning Opportunities* – what a drag on a sunny day! Not so fast…

We have decided to adopt Aesop's words of wisdom: "Better to be wise in the misfortunes of others, rather than your own." To that end, we give you our version of beach reading. True law cases of interesting tales of others which impart estate planning wisdom for you and yours (but also with money, family shenanigans, and sex). Ready? Once upon a time…

It Was A Dark And Stormy Night.... and in the Northern Celtic Kingdom of Coldalot, Guinevere and Arthur lay shivering in bed. "I want more!" cried Guin. Reluctantly, Art tossed a bit of the tapestry over to Guin. But that was not it. "I can't take it anymore!" Guin cried out. "Come with me, Art, come with me to the Southern Lands. I have heard of a developer down there, Lance of the Lake, who can sell us a waterfront home for next to nothing. Where we can walk free (or use a goat-cart, which I hear are everywhere), free of the long frigid Coldalot seasons." "I can't leave Coldalot, Guin," Art replied. "My work is here, my friends are here,

Doc Merlin knows me, knows my aches and pains, I can't leave him." "Holy Grail!" said Guin, "If you won't follow me in my quest, I leave alone." For eight long months Art wondered whether Guin had made it safely to the Southern Lands, but one day, as the seasons turned bringing warmth's brief stay to Coldalot, Art returned from work to see the lovely Guin waiting at the door. "You're back!" cried Art, as he swept her into his arms. "Not really," said Guin. "Just for a few months. I love the Southern Lands; I leave to return when the warmth leaves." Year after year, Guin left with the warmth, only to return to Coldalot for a brief summer shared with renewed vigor with Art. But a dark cloud descended when one day the Coldalot Tax Collector came knocking while Guin was North. "A tax on the two of you!" the Collector declared. "Not so fast," said Guin. "I am no longer a Celtic citizen of Coldalot, even though a loved wife of Art. I am now a Laker, through and through. I have a home on Lake Malory where I live eight months a year, my goat cart is there, I have friends, and even have a little business going on the side with Lance. You cannot impose a Coldalot tax on me." The Collector stamped his foot and snorted a snort heard throughout the land, but Guin was right. Coldalot had no jurisdiction over her. A single tax was imposed on Art, the cold winds began to blow, and, with a kiss to Art, Guin headed south.

> **And the moral of the story is**: Absence makes the heart grow fonder, and the purse fuller. And it is perfectly acceptable for a husband and wife to have two different domiciles for tax purposes, one in Massachusetts and one in Florida (for example). Care must be taken to jump through all the appropriate hoops, and a "domicile audit" should be done with your advisors every few years to insure compliance. But, if artfully done, you might cut your tax in half.

A New Leaf On Life. Mr. and Mrs. T were happily married for over forty years, both retired from professional positions and enjoying handsome retirement income. They appreciated their retirement, taking a few trips and sipping an occasional bloody mary on the deck of their country home. One day without warning, however, Mrs. T had a massive stroke. Mr. T brought her to several doctors, all of whom diagnosed her condition as "hopeless". As a last resort and on the advice of relatives who had read about special cures provided to incurable people, Mr. T took his wife to Samoa to be seen by certain natives there who made a practice of treating hopeless cases. These "doctors" derived their training and treatments from tribal customs and secrets handed down through the years. Their methods of cure included invoking spirits and massaging the patient with special leaves. Unfortunately, the treatments had no effect on Mrs. T's condition (but her skin tone improved considerably).

Mr. and Mrs. T took a medical expense deduction for airfare and living expenses in Samoa, but the IRS disallowed it. The Ts fought the decision in the Tax Court. In disallowing the deduction, the Tax Court said the treatment to Mrs. T bore no relation to her particular illness. None of the U.S. physicians who examined her prescribed such a trip or treatment. The evidence showed that all the patients of the native practitioners received exactly the same treatment regardless of their illness, and Mr. T had no reasonable expectation that his wife's condition would improve as a result of the treatment.

> **And the moral of the story is…** the law of the jungle is not the law of the U.S. Turning over a new leaf may not turn into a tax deduction. It's not unusual for people with severe, apparently terminal illnesses to travel to different parts of the world when there is

a new, even unorthodox treatment for their illness that is not available here in the U.S. Many of us may remember the actor Steve McQueen who went to Mexico for experimental treatment of his cancer. Questions sometimes arise, however, as to what extent such unorthodox measures may be deductible as "medical" expenses. Although the story of Mrs. T pushed the question to the top of the totem pole, one has to agree with the court's opinion. In fact, even if the leaves and incantations actually cured Mrs. T, the deductions would not have been allowed for the reasons the court stated. Thus, although the treatment might be experimental, it also has to fall under the category of "medical care", which generally means care and treatment by professionals trained and licensed to provide such care. Here, the "medicine" in "medicine men" of Samoa wasn't what Congress had in mind in enacting the law.

Fee Fi Fo Fum. I Smell The Blood Of... One of the strangest tales ever to come before the Tax Court was that of Dorothy Garber, who was charged with the crime of tax evasion for selling her blood and failing to report the proceeds as taxable income.

During the course of blood transfusions required during her pregnancy, it was discovered that Dorothy was one of two or three people in the world with rare anti-bodies in her blood. A medical research company offered and subsequently paid Dorothy thousands, including a $25,000 signing bonus, for agreeing to provide samples of her blood. Dorothy did not report the receipt of funds, as she considered it tax-free income, similar to a payment for personal injuries. She based this conclusion on the fact that the blood-drawing procedure was quite painful (though the money apparently made it worth the pain). The IRS disagreed and charged Dorothy with tax evasion. Dorothy appealed. The court agreed with the IRS. Personal injury awards, the court said, are the result of litigation or settlement of a claim, not of a voluntary sale and voluntary submission to a physical act. Dorothy countered this with the argument that there would only be income if the receipts exceeded her cost. The "cost" of her blood should be at least equal to the sales price, so there should be no net income. The court dismissed this as circulatory reasoning and held that the donation of blood is a personal service and payment for it produced personal service income, subject to tax. Dorothy was ordered to give the IRS its share of the blood money.

And the moral of the story is… Render unto Caesar that which is Caesar's, the rest belongs to the IRS. Money comes in, money goes out. The money that comes in can only be a gift, an inheritance, salary or other compensation, "unearned" income (dividends and interest), awards from lawsuits, proceeds from sale of a possession, lottery winnings, or manna from heaven. Some of this is taxable, some not taxable, but it is not up to you to decide.

The Tale of Mr. Nutkin. Artie Nutkin was a squirrely guy to begin with and was worried that if he got married, he wouldn't enjoy it. He did so anyway, and he was right. Not only did he not enjoy it, but his wife turned out to be physically and mentally abusive to Artie, and he fell into a state of severe mental depression. Consultations with a psychiatrist resulted in the doctor recommending a divorce to preserve Artie's mental health. Artie followed the doctor's advice and got a divorce, upon which his mental state immediately improved. Based on the diagnosis, prescription, and remarkable result, Artie deducted his legal fees for the divorce, as well as the

fees and settlement he paid to his wife, as a medical expense. The IRS didn't agree with Artie, but surprisingly, the Tax Court, to a certain extent did. The court agreed that Artie was suffering from depression and that his mental health was endangered by his marriage. Unfortunately, that is not all that is required in deducting medical expenses. Artie would have to show that he would not have incurred the expense had there been no illness, and judging by the wife's behavior, the court felt that Artie would have to be nuts to stay married.

> **And the moral of the story is…** Marry in haste, repent at leisure, but don't expect the IRS to pay for it. It seems we all have a tendency to be creative when it comes to tax deductions, looking for the slightest string to connect an expense to a deduction. In Artie's case, the string didn't seem so slight but in the end he failed to tie the legal fees to the medical treatment, so Artie got no tax benefit for untying the knot.

The Lady Or The Tiger? We all know the story of the barbaric king who punished lawbreakers in his kingdom by forcing them to choose a door. Behind one door was a woman and the other, a tiger. If the woman was chosen, then the lawbreaker was innocent. If the tiger was chosen, then the lawbreaker was guilty and fed to the tiger.

In each of the stories below, a family member challenged a decedent's Will claiming that the Will was signed under undue influence. Based on the facts of each story, it is not easy to tell behind which door undue influence lurked. But, read on, and if you were the lawbreaker in that ancient kingdom, take a guess as to which story is the "lady" and which is the "tiger".

Door #1: Ernest, an old man in a nursing home, met and fell in love with Julie, a 29 year-old social worker, who worked at the nursing home. While Ernest spent his last living months in the nursing home, Julie tended to his every need, visiting him often and helping him with his finances. Even after Julie left her job at the nursing home, she continued her visits with Ernest. About nine months before his death, Ernest met with his attorney and signed his Will, leaving the majority of his estate to Julie. Ernest's relatives brought a suit against the estate claiming that Julie took advantage of Ernest and used her relationship with him to encourage him to leave his estate to her.

Door #2: Mary was an elderly woman who spoke no English and suffered from psychosis, paranoid delusions, and hoarding. Mary owned a six-family apartment building, which contained her apartment and five rentals. After this building was condemned by the City of Boston, Mary's interpreter, Peter, encouraged her to deed the building to him for $1, in exchange for his promise to renovate the building and give her an apartment to live in rent-free. Unfortunately, after the renovations were complete, Peter rented all of the apartments in the building, leaving Mary to fend for herself and live (and pay rent) in another building. Shortly before Mary's death, she signed a Will, which was written by Peter and which left him all but $250. After Mary's death, one of her family members brought a suit against Peter claiming that the transfer of the apartment building was void and that Mary's Will was invalid, as Peter unduly influenced Mary to sign it.

> **And the moral of the story is…** Age is irrelevant in the face of true love and friendship. In Ernest's case, although it appeared that Julie was in a position to take advantage of

Ernest and persuade him to leave his estate to her, the court found that Ernest and Julie formed a true friendship during their time together in the nursing home and, unlike the case of Mary and Peter, Julie did not write Ernest's Will for him. Ernest scheduled an appointment with his own attorney, met with his attorney alone, and clearly and competently instructed his attorney as to the disposition of his property. Furthermore, despite the law suit by Ernest's relatives, Ernest did not have a strong relationship with any of them and it would not have been unusual for him to leave his estate to someone to whom he felt closer. Finally, unlike Mary, who signed her Will shortly before her death in fear of Peter (the "tiger"), Ernest lived nine months after signing his Will in favor of Julie (the "lady"), which the court found was a sufficient period of time for him to reconsider the Will's provisions and make any necessary changes.

A Pandora's Box in Estate Planning? Mildred established a trust in 1992 and, four years later, she considered amending the trust. The terms of the trust required that any amendment must be signed by Mildred and delivered to the trustee (who at the time was also Mildred). Mildred's attorney prepared the amendment in accordance with her wishes and Mildred signed the amendment as the settlor of the trust and as the trustee. However, after signing, Mildred explained to her attorney that she wanted to keep the original document, since she was not positive that she wanted the amendment to take effect at that time. As a result, Mildred took the document home with her and the attorney never saw it again. In 2005, Mildred again asked her attorney to amend the trust and, similar to what happened before, after signing, Mildred was unsure whether she wanted the amendment to take effect, so she took it home with her again. At Mildred's death, her children disagreed as to whether the trust had been amended by Mildred, since neither amendment was ever actually "delivered" to the trustee.

And the moral of the story is… Be wary of taking estate planning matters into your own hands, as it could open a Pandora's Box of mistakes and unintended results. Mildred thought that she could make the amendment "effective" at any time on her own, but what Mildred didn't realize is that in order to change the trust she must comply with the terms of the trust. The trust required delivery of the amendment to the trustee in order for an amendment to be effective. Although, as trustee, Mildred had physical possession of both amendments to the trust, the court held that delivery is more than actual possession. It requires intent and, based on Mildred's conversations with her attorney at the time the amendments were signed, Mildred's intent was for them not to take effect. Was that actually Mildred's intent at her death? Since she did not consult her attorney on the matter or otherwise make a clear expression of her intent, we will never know.

The Lion and the Mouse. Readers may recall the fable in which the lion, who had once spared the life of a little mouse, found himself ensnared in a hunter's trap. It was the mouse, little and all but forgotten, that nibbled through the ropes and freed the lion, a reminder that the weak and small can affect those mightier than themselves. In a similar story of haste, Mr. Jones was a customer of a brokerage firm and his broker managed numerous accounts, one of which was a small IRA. The broker left and Jones's "orphaned" account was assigned to another broker. Jones divorced his spouse and changed the beneficiary of all accounts from his ex-spouse to his estate except the small IRA, which he overlooked. A successful business man, he later rolled the balance of a significant profit sharing plan into this IRA, died, and the brokerage firm paid the

balance to – you guessed it – his ex-wife. Jones's estate appealed to FINRA, the independent regulator for all securities firms in the United States, alleging the brokerage firm was guilty of negligence and a breach of fiduciary duty when they failed to advise Jones to designate his new surviving spouse as the beneficiary. The estate also argued that pursuant to the securities industry's *Know Your Customer Rule*, the brokerage firm had a duty to periodically review Jones's accounts. Ultimately, the arbitrators agreed that Jones likely had no intention whatsoever of making his ex-wife the beneficiary of his considerable IRA, but disagreed that the brokerage firm or the broker assigned to the account had breached any duties to the customer.

> **And the moral of the story is…** Whether friend or foe, do not overlook the weak and the small. Remember, as well, that while advisors may guide and advocate, the ultimate responsibility remains with you.

The Goose That Laid The Golden Egg. A man and his wife owned a special goose who laid golden eggs. In hopes of becoming richer more quickly, they split open the goose, only to learn there were no golden eggs inside of her. The valuable lesson learned was that too much greed results in nothing. If you held a golden goose – a winning lottery ticket that had been purchased as part of an office lottery pool – would you split (open) the winnings? Must you? In a tale that has almost taken 13 years to resolve, an employee at a restaurant held a ticket worth $10,000,000 over 30 years. Co-workers alleged that they had agreed among themselves that if any had won, the winnings would be split. The court ultimately found there had been an oral agreement to split the winnings. But under Alabama law, contracts relating to gambling are unenforceable. The same winning employee then sought to form a corporation to hold the winnings, gifting a 41% interest to her family members, alleging that while there had been no agreement with her co-workers, there had been an agreement with her family members. In a stroke of misfortune (or karma?), the IRS and the Tax Court disagreed, imposing a gift tax on the winnings.

All hope is not lost for aspiring communal gamblers, though. In a separate tale, the Tax Court found a valid lottery partnership when a family who had regularly purchased tickets, deposited them into a "family ticket" bowl, and had a bona fide agreement in place to split the proceeds. When good fortune befell them, the family held a meeting and agreed upon sharing percentages. The agreement was respected for gift tax purposes.

> **And the moral of the story is**… In seeking out the golden egg, too much greed may result in nothing (or a large gift tax). Notably, the failure to have a finalized agreement prior to winning was not fatal to the arrangement, though other courts have suggested it would be prudent to have a written agreement, clarifying how many family members are parties to the agreement, and keeping all of the tickets in a place where all family members have access.

He Died In 2012, And The Stork Came In 2014! Did The Stork Get Lost? Mr. Plover and Ms. Robin had been dating for a few years when Mr. Plover was diagnosed with and began treatment for brain cancer. Because one of the side effects of chemotherapy is sterility,

before he started treatment, Mr. Plover deposited sperm with a local hospital, at which time he signed a depositor contract instructing the hospital to release the sperm to Ms. Robin upon his death. After Mr. Plover lost his battle with cancer, Ms. Raven, the administrator of Mr. Plover's estate, filed suit seeking to require the hospital to return the sperm to the estate. The court denied the request, holding that the sperm was Mr. Plover's property, ownership and transfer of which could be controlled by contract, and as Mr. Plover's contract was a valid contract under state law, its terms must be respected.

In a similar story, Mama Cardinal and Papa Cardinal had been married for a few years when Papa was diagnosed with cancer. Just like Mr. Plover, Papa deposited sperm with a local hospital and subsequently succumbed to his illness. Through the use of in vitro fertilization, Mama became pregnant with Papa's sperm and gave birth to twins 18 months after Papa passed away. Mama brought suit against the Social Security Administration ("SSA") after her subsequent application for Social Security survivors benefits for the twins was denied. The court held that the SSA was required to look to state law to determine whether the twins would have qualified for a share of Papa's estate if he has passed away without a Will (i.e., intestate). In this case, because the twins would not have received a share of Papa's estate under Florida law, the denial of Mama's application was ultimately upheld.

> **And the moral of the story is….**Men, your sperm is yours to do with as you please, including use as a posthumous gift (such as, say, your favorite watch), but if that gift brings with it a visit from a stork (or two), depending on where you live, the SSA can choose to be excluded from the celebration. The ever improving world of medicine continues to provide many new opportunities to people with respect to all aspects of their health, including their reproductive health. Not only has medical science made many leaps forward in assisting people to have children when they otherwise would not be able to do so, but as part of such progression, it is now possible for men to store sperm for a period of time to be used to create an embryo in the future (can you say *freezer burn*?). In making the decision to freeze sperm for future use, a man should consider the state and federal legal implications to a child who is conceived and born after his death as well as what will happen to deposited sperm if he dies before it is used.

Little Red Henrietta..... lived all alone in a cottage, surrounded by her three children each of whom lived nearby with their own families. Henrietta was well liked in the town, famously wearing a red hat wherever she went, hence her nickname. But despite the affection and kindness of the townspeople, Henrietta often found herself on her own. One day she called her three children together, and said "Who will help me do my spring cleaning?" "Not I," said the Eldest. "Not I," said the Middle. "I will help you," said the Youngest, and she did, with Little Red Henrietta giving her money to buy cleaning supplies at the market. But, times being what they were, the supplies cost more than anticipated, and the Youngest had to use some of her own money to buy what was needed. Little Red Henrietta was appalled, and decided to open a joint bank account with Youngest to insure that this did not happen again. Not long afterwards, Little Red Henrietta called her three children again and asked "Who will help me clear the garden?" "Not I," said the Eldest. "Not I," said the Middle. "I will help you," said the Youngest, and she did, calling Aesop's Landscaping for assistance, and paying the bill from the joint account with the funds deposited by Henrietta. Time passed, and Little Red Henrietta sold the cottage, put the

proceeds in the joint account, and went to live with Youngest. Then Henrietta passed. The estate lawyers at Grimm and Grimm called the family together and asked: "Who would like an inheritance?" "I would!" said the Eldest. "I would!" said the Middle. And the Youngest just wiped a tear from her eye and asked for the red hat, which the others gladly gave her. "Well," grumbled Lawyer Grimm, "All that is left is the joint account, and that passes to Youngest by operation of law. You, Eldest, and you, Middle, are left nothing, but perhaps regret."

> **And the moral of the story is**: What goes around comes around. Often a parent will have a joint account with the child that is most helpful, first to permit the child to more easily assist the parent with finances and the like, but then, more often than not, to give that helpful child a little extra at death. The joint account is by law owned by the surviving joint owner. However, trouble can occur when what the parent really intended was to give the "red hat" child "signatory authority" over the account (to pay bills, etc.) but wants the account to pass to all children at death in equal shares. The careful client will have all joint accounts reviewed by advisors to insure the estate plan which is implemented at death is the plan envisioned by the client during life.

And so we come to the end. Mark Twain said a "classic" is a book people praise and don't read. As we see it, either way we win. Stay cool!