

## CLIENT PROFILE: AMMEX

*Since it was formed in 1998 in response to the growing need for infection control products, AMMEX has become one of the premier suppliers of high quality disposable gloves in the United States and overseas. It has been listed as one of the Top 100 Fastest Growing Companies in the state of Washington and one of the Top 500 Fastest Growing Companies in the Nation. Utilizing quality manufacturing teams throughout Asia, AMMEX has inspected dozens of manufacturing plants over the years to ensure that it is providing its customers with the highest quality products available at the best prices. Coupling its marketing and sales knowledge with an in-depth evaluation of its distributors' needs, AMMEX listens, probes and learns so that it can provide those distributor's best products to the people who rely on those products the most, such as professionals in the healthcare, industrial and manufacturing sectors. In short, AMMEX sets itself apart by providing the right protection, right away. If your company could benefit from AMMEX's commitment to quality and value, please feel free to contact AMMEX's Founder and President, Fred Crossetto, at 425-251-4000.*

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## ROMERO MONTAGUE'S OWN "RISING STAR."

Romero Montague is pleased to announce that its very own Michael Wiggins has been named a "Rising Star" by the widely distributed publication, WASHINGTON LAW & POLITICS. To receive this honor, Michael was nominated (anonymously) by other, well-respected Washington State lawyers. "To be thought of so highly by lawyers who have been practicing for many more years than I have is one of the highest professional compliments I can think of," said Michael of his recent recognition. We would like to congratulate Michael on his recognition and his continued success with Romero Montague.

## ROMERO MONTAGUE P.S. ATTORNEYS AT LAW

### Spring 2006 Newsletter

## ROMERO MONTAGUE WELCOMES NEW SHAREHOLDERS

Long-time Senior associates Justin Park and Michael Wiggins have been named as Romero Montague's newest shareholder. In addition to continuing to provide superior service to the firm's clients, Justin will be the shareholder in charge of the day to day operations of the Washington office and Michael will be the marketing director for the entire firm, as well as corporate secretary. "I am pleased to have Justin and Michael become shareholders in the firm," said Troy Romero, the firm's managing shareholder. "They have spent a number of years with the firm and have shown through their dedication and hard work on behalf of the firm's clients that they are committed to the success of the firm and its clients." Congratulations Justin and Michael.

## RM WELCOMES ITS NEWEST TEAM MEMBERS

Romero Montague is pleased to announce that three outstanding individuals have joined its ranks. First, Jeana Burke has joined the firm as a Legal Assistant to Shareholders Justin D. Park and Michael E. Wiggins. Prior to moving to Duvall from the Dallas/Ft. Worth area with her husband and two children in 2004, Jeana

acquired more than 13 years of legal experience as both a legal assistant and paralegal. When not contributing to Romero Montague's clientele, Jeana enjoys participating in her daughters' various sporting activities and watching hockey with her husband, who is the Deputy Chief of King County Fire District #45, in the City of Duvall. When you call Romero Montague and you get a friendly southern voice on the other end of the line, you'll know you're speaking with Jeana.

We next would like to welcome the firm's newest attorney, Meghan Hanson. Meghan joins Romero Montague's growing California litigation practice as Of Counsel after graduating from the Thomas Jefferson School of Law in San Diego. Meghan sat for and passed the Washington State Bar Exam, and she is currently pursuing her LLM at the University of Washington's School of Law. When she is not assisting the firm's California clients and studying for her LLM, Meghan enjoys spending her time with her husband and her newborn baby girl.

Last, but not least, we would like to welcome into our midst Dani Rogers, who recently joined the Romero Montague team as the firm's part-time document clerk. As most people know, law offices produce more paper than most other businesses, and Dani has been instrumental thus far in making sure that the firm's document management practices are strictly followed. When she is not involved in the firm's document management process, Dani enjoys spending time with her six children.

ABOUT THIS NEWSLETTER: This is a publication for clients, prospective clients, and friends of attorneys and staff of Romero Montague P.S. If you have received this Newsletter, you fall into one or more of these categories. Our hope is that you will find this publication both informative and useful. The format is to update you on firm news as well as to provide you with information to help you and/or your business. Please let us know if we have served these purposes. We highly value your feedback. You can reach us at 425-450-5000, [info@RomeroMontague.com](mailto:info@RomeroMontague.com), or [www.RomeroMontague.com](http://www.RomeroMontague.com).

## EXEMPT OR NON-EXEMPT: THAT IS THE QUESTION

By H. Troy Romero

Everyone reading this article is likely either an employee or an employer – perhaps both. Employment law touches everyone’s lives. One of the issues that is at the forefront of employment law right now, up and down the West Coast, is whether an employee is classified as exempt or non-exempt. The answer to this question can have a huge, if not determinative impact on resolving legal disputes between employees and employers. This article will give you a short description of why this issue is so important, and then strategies for tackling the issue in your own business dealings.<sup>1</sup>

If an employee is exempt, he or she is generally speaking not entitled to overtime pay, time and a half, holiday pay, set meal breaks, or prescribed morning/afternoon breaks. An exempt employee basically works the hours necessary to get his or her job done, regardless of whether that is 30 hours or 60 hours a week. Conversely, a non-exempt employee is one who is entitled to be paid for any hours he or she works over 8 in a day or 40 in a week. They also receive time and half in certain instances, payment for working on holidays, get a defined amount of time for meal breaks each day, as well as morning and/or afternoon breaks. In case you have been one of the fortunate few who have not yet encountered an employment dispute, it is easy to see that when an employee and employer part ways, the employee wants to be classified as non-exempt and the employer wants the employee to be classified as exempt. Regrettably for both parties, it does not really matter whether the employee was classified as exempt or non-exempt by the employer—what really matters is what he or she did on a daily basis for the employer. This is where the rubber meets the road and where litigation efforts are generally focused.

Federal law and state law up and down the West Coast differ somewhat in their treatment of who is exempt and who is not. Notwithstanding the differences, there are common indicia of an exempt employee that seem to be recognized by the courts. The following is a non-exclusive list of characteristics of employees who, if they possess all of these characteristics, are likely exempt:

- Salaried;
- Controls the time they come to work and leave work;
- Have a “management” title;
- Have discretionary authority to make decisions for the employer that are significant (e.g. contribute to the bottom line);
- Spends at least fifty percent of their daily work time doing “managerial” tasks;

The first three of these characteristics are easy to determine and rarely become a basis for a legal dispute. However, the last two characteristics, especially the last one, is the battle ground for almost all employment litigation in which the issue of being “exempt” is part of the lawsuit.

Over the past decade we have handled many employment disputes up and down the Coast. In the course of representing companies, from Fortune 500, to start-up, to Mom & Pop companies, we have developed our own checklist of evidence we try to secure to prove that an ex-employee was properly classified as exempt (for those of you reading this from an employee perspective, you would obviously want to secure evidence of the opposite proposition for each of these items). This is our checklist, which we would encourage every one of our employer clients to save and use for future reference:

- Proof that the employee hired someone.
- Proof that the employee fired someone.
- Proof that the employee disciplined someone.
- Proof that the employee counseled

someone.

- Proof that the employee conducted an employee evaluation of a subordinate.
- The employee’s resume and/or job application (which hopefully shows that they are seeking a management position and/or have had management experience that they are trying to show to the employer).
- Proof that the employee completed management reports.
- Proof that the employee received credit (in some form) and/or negative consequences (in some form) for the financial performance of his/her department, division, etc.
- Proof that the employee attended special training just for managers.
- Proof that the employee completed various tasks at work that required discretion and hopefully contributed positively or negatively to the bottom line.

It is a very rare case where our employer client has written evidence on each of the checklist items. We have successfully resolved employer/employee disputes where we did not have any of this evidence (in fact, under federal law, an employee can be exempt under a classification of administrative, professional or executive even if the employer does not have any of this evidence). That said, a prudent employer will put in an exempt employee’s personnel file some of this evidence as it is created (or at least know where to find it should a dispute arise down the road). If it follows this course of action as a matter of company practice, it will go a long way to eliminating a claim by an ex-employee that he or she is non-exempt.

We wish you the best in all your employment and HR matters. If you ever want or need to bounce something off us, or need help in handling any legal dispute, please give us a call. At times one call is all that is needed to prevent a lawsuit from happening.

## FAMILY LIMITED PARTERSHIPS FINDING THE BALANCE BETWEEN ASSET ACCESS AND SECURITY.

By Michael E. Wiggins

It is common knowledge that those of us who either own companies or work in the professional services industry (e.g., physicians, lawyers, real estate and investment brokers, etc.) stand a higher chance of being sued personally by a dissatisfied customer, client, vendor or supplier than those who don’t. For those of us who have thought about the risks of personal liability associated with our occupations, we naturally have thought about the importance of protecting our personal assets from would-be creditors. Many times we’ve thought about asset protection in the context of preparing a sound wealth management/estate planning strategy.

One of the most difficult issues that arise in the context of preparing a sound asset protection/estate planning strategy is striking a balance between the need to aggressively guard assets and maintaining the control of and access to those assets. Often times, these two goals seem all too mutually exclusive. But one relatively new wealth management device that does a good job of balancing these interests is the Family Limited Partnership or, as it is otherwise known, the FLP.

The easiest way to discuss the FLP as an asset protection/estate planning device is to first define what the FLP is and then describe the process by which one is established. Then, after doing that, it is easier to understand how the FLP works as an asset protection/estate planning device.

### WHAT IS THE FLP?

Just as its name states, the FLP is nothing more than a limited partnership formed under the Revised Code of Washington (the “Code”). Under the Code, a limited partnership is a partnership that

includes at least one general partner and one or more limited partners. Different than the partners in a normal partnership, general partners in a limited partnership have sole control over the partnership operations, including the management and control of the partnership’s assets, while the limited partners are mere financial partners having no control over the assets whatsoever. It is this separation of control that makes the limited partnership ideal for joint ventures where cash investors want a stake in the game without subjecting themselves or their assets to the possible personal liability associated with a regular partnership.

Setting up the FLP, the general partners will execute a well-prepared partnership agreement as the bedrock of their partnership. Once they do that, the general partners will then transfer their assets into the partnership, assets which can include real and personal property and investments. Once they transfer the assets, the general partners can then gift to individuals of their choosing limited interests in the partnership. Creating the partnership agreement, funding the partnership with the select assets, and then transferring limited interests in the partnership to the chosen individuals are the three most critical aspects of utilizing this asset protection tool. Each individual’s circumstances are different, so someone wanting to set up a FLP should seek competent legal and accounting counsel to guide him or her through the maze of statutes and regulations that apply to the establishment and maintenance of these types of entities.

### A WEALTH MANAGEMENT/ ASSET PROTECTION DEVICE

The most immediate and noticeable benefit of the FLP comes from the fact that the assets transferred into the FLP no longer belong to the general partners personally, but instead belong to the FLP. This means that the assets are not subject to attachment or execution as a result of personal liability incurred by the general partners. (An

example of how this works would be: assume the general partner negligently caused another’s death in the course of his business. If the assets remained in the general partner’s name personally, those assets would be available to the deceased’s estate to satisfy a judgment against the general partner. Under a FLP those assets would not be available.)

While the FLP is a good device for protecting assets, there are other wealth management devices that serve that same purpose equally well. But what the FLP offers that other devices do not is the ability of the general partners to maintain control over their assets, even when they transfer those assets out of their names personally into the FLP. As mentioned above, the individuals who establish the FLP and transfer the assets into the FLP’s name become the FLP’s general partners. Even though they may transfer 95% of the partnership interest to others as limited interests, the 5% general partnership interest they retain for themselves is all they need to maintain sole management and control of the partnership’s assets.

So long as the general partners maintain the FLP in accordance with the applicable statutes and regulations, the FLP is an effective way to balance the need to protect one’s assets from personal creditors with the need to maintain control over those assets. Combine that with the benefit the general partners receive by disbursing tax liability among the limited partners, as well as the ease by which the general partners can transfer their partnership interests as part of their overall estate planning strategy, and you have an excellent wealth management device by which professionals in high risk occupations can protect their assets from personal creditors.

As mentioned above, you should seek the advice of competent legal and financial counsel before utilizing a FLP as part of your overall wealth management strategy. If you would like to know more about FLPs and whether this type of partnership should be part of your strategy, please contact Michael Wiggins at 425-450-5000 or e-mail him at: mwiggins@romeromontague.com.

<sup>1</sup> Because the firm provides legal services in more than one state, this article is written in a generic fashion, using the laws from several states, as well as federal law, to give general guidelines on the topic. If you have an employment specific question, do not rely on this article for guidance to that specific issue – contact us and we can help you analyze it (and if necessary, resolve it).