

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
January 26, 1981

Page 1.

The thirteenth meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 161:

AN ACT TO ADOPT THE REVISED UNIFORM LIMITED  
PARTNERSHIP ACT; REPEALING SECTIONS  
35-12-101 THROUGH 35-12-403, MCA.

Senator Mazurek, District 16, Helena, presented the bill as its sponsor, on behalf of the Business Section of the State Bar of Montana. He pointed out that a similar bill was introduced during the 1979 session, and was defeated. This present bill is intended to revise and bring up to date the existing limited partnership laws. Senator Mazurek then made reference to a letter from James M. Haughey, Billings attorney (marked Exhibit A and attached to these minutes). He also explained limited partnership corporations according to Exhibit B, attached to these minutes.

Ward Shanahan, Chairman of the Bar Association's Business Section, then testified on behalf of this bill. He pointed out that one of the main reasons for amending the present law is the ponderous filing procedure that now is required.

Bob Murdo, Secretary of the Business Section of the State Bar Association, in testifying for this bill, referred the committee to a copy of the law (marked Exhibit C and attached to these minutes) and a copy of an article taken from "The Business Lawyer", November, 1978 (marked Exhibit D and attached to these minutes).

Roger Tippy, of the Business Law Section of the State Bar Association, described his efforts in composing this bill and assessing its effectiveness. He stated that the State Auditor's Office supports the bill as written.

Ted Doney, attorney from Helena, representing Petro-Lewis Corp., stated that his client feels that this updating of the existing law is very necessary because of the current

law is unclear on the procedure to be used in registering foreign limited partnerships.

Don Allen, Executive Director of the Montana Petroleum Association, also spoke in favor of the bill, as did J. C. Weingartner, representing the State Bar Association of Montana.

Senator Crippen then cautioned that the repealer clauses and the effective date clauses would have to be handled very carefully; and pointed out that there might be some potential tax benefits to the state from income derived from the partnership.

CONSIDERATION OF SENATE BILL 162:

AN ACT TO PROVIDE FOR CONTRIBUTION  
FROM JOINT TORTFEASORS; AMENDING  
SECTION 27-1-703, MCA.

Senator Mazurek presented the bill, stating that the present statute is unfair because it tends to single out a defendant who is most apt to be able to pay damages, rather than distributing blame among all parties who might be responsible. At the end of his presentation he submitted proposed amendments (marked Exhibit E and attached to these minutes).

Glen Drake, attorney from Helena, representing the American Insurance Association, spoke in support of the bill, describing it as a necessary aid to justice in negligence actions.

Mike Meloy, representing the Montana Trial Lawyers Association, then spoke in opposition to the bill. He felt that the amendment submitted by Senator Mazurek does all the correcting of present law that is required; and that the bill itself permits the defendant to join anyone else as a party who the defendant feels is a contributor to the damage. He said that the present law puts more pressure on the plaintiff to pick the correct defendant -- that is, the one who has actually caused the damage.

In closing, Senator Mazurek stated that the plaintiff should not be placed in the position of picking the defendants -- it should be the responsibility of the court.

FURTHER CONSIDERATION OF SENATE BILL 112:

Senator O'Hara moved that the bill pass.

Senator Crippen felt that in line 17 of the bill the term "administrative remedies" is confusing. The feeling of Senators Mazurek, S. Brown, and Crippen was that the bill

does not preclude filing of an action in district court during an action by the Human Rights Commission.

David Niss stated that the question which goes unanswered by this bill is, "What if administrative proceedings are never begun?" He stated that the bill in its present form does not prevent actions being brought in district court at any time if administrative proceedings are not begun.

Senator O'Hara withdrew his motion.

Senator Anderson quoted Senator Turnage as saying that the problem of dual filings has never become a major one, and that the bill is not a badly needed one. Senator Tveit suggested that the committee pass on the bill for the day, while he pursued its intent with Chad Smith and Senator Turnage.

A handwritten signature in cursive script, reading "Mike Anderson", is written over a horizontal line.

Senator Anderson  
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 1/26/81

NAME	PRESENT	ABSENT	EXCUSED
<del>Anderson, Mike, Chr. (R)</del>	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

NAME: WARD SHANAHAN DATE: 1-26-81  
ADDRESS: <sup>301</sup> FIRST WALK BOWIE BLDG P.O. Box 1686 HELENA MT  
PHONE: 442-8560  
REPRESENTING WHOM? BUSINESS SECTION, STATE BAR OF MONT.  
APPEARING ON WHICH PROPOSAL: SB 161 LTD P'SHIP ACT  
DO YOU: SUPPORT? X AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS:

Will make oral statement

# BUSINESS SECTION LIMITED PARTNERSHIP RULING

7-346

1979 Rulings

13 3-21-79

## LAW AND ANALYSIS

Section 995(c) of the Code, as originally enacted, provided that if a shareholder disposed of stock in a DISC, any gain recognized on such disposition would be included in gross income as a dividend to the extent of accumulated DISC income of such DISC attributable to the shareholder's stock interest. The section also provided that if the disposition transaction terminated the separate corporate existence of the DISC, any gain realized on the disposition of such stock will be recognized to the extent of accumulated DISC income attributable to the disposing shareholder's stock.

Section 995(c)(1)(C) of the Code, which was added by the Tax Reform Act of 1976 [Pub. L. 94-455], section 1101(d)(1), 1976-3 (Vol. 1) C. B. 1, 134, provides additionally that if a shareholder sells stock in a DISC in a liquidation qualifying for nonrecognition of gain under section 337, then the excess of fair market value over adjusted basis of such stock will be included in gross income of the shareholder as a dividend to the extent provided in section 995(c)(2). Section 995(c)(2) provides that the amount described in section 995(c)(1)(C) shall be included in gross income as a dividend to the extent of the accumulated DISC income of the DISC which is attributable to the stock disposed of and which was accumulated in taxable years of the corporation during the period or periods the stock disposed of was held by the shareholder which disposed of such stock.

The Senate Finance Committee (S. Rep. No. 94-938, 94th Cong., 2d Sess. 299 (1976), 1976-3 (Vol. 3) C. B. 57, 337) in explaining the law change stated:

The committee amendment also includes two provisions to resolve technical problems in existing law. The first relates to recapture of accumulated DISC income upon disposition of stock of a DISC. Under present law if stock in a DISC is distributed, sold, or exchanged in certain tax-free transactions (sec. 311, 336, or 337) there is no recapture because neither of the conditions for recapture are satisfied: No gain is recognized and the corporate existence of the DISC is not terminated. The committee's amendment specifically requires recapture under these circumstances.

As originally enacted, section 995(c)(1)(C) of the Code was to apply to transactions occurring after December 31, 1975, in taxable years ending after such date. However, the Revenue Act of 1978, section 701(u)(12)(A) extended the effective date of section 995(c)(1)(C) to transactions occurring after December 31, 1976, in taxable years ending after such date.

## HOLDINGS

P-1 is not required to include in its gross income for 1975, as ordinary income, any of the 250x dollars of gain from the sale of S stock.

If an identical transaction occurs after December 31, 1976, a seller of DISC stock would be required to include in its gross income as a dividend the excess of the fair market value over the adjusted basis of the DISC stock, in the hands of the seller, to the extent of the accumulated DISC income of such DISC attributable to the seller, as provided in section 995(c)(2) of the Code.

[¶ 6495], Rev. Rul. 79-106, I. R. B. 1979-12, 21.

[Code Sec. 7701]

Association v. partnership: Limited partnership arrangements: Tax classification: Significant factors.—Factors are listed that will not be considered (independent of their bearing on the six major corporate characteristics listed in section 301.7701-2(a)(1) of the regulations) "other factors" that are significant in determining the classification under section 7701 of the Code of arrangements formed as limited partnerships. Back reference: ¶ 43.01.

Advice has been requested whether the factors described below will be considered "other factors" that are significant in determining the classification of arrangements formed as limited partnerships for purposes of the regulations under section 7701 of the Internal Revenue Code of 1954.

The term "association" refers to an organization whose characteristics require it to be classified for purposes of taxation as a corporation rather than as another type of organization such as a partnership or a trust.

Section 301.7701-2(a)(1) of the Procedure and Administration Regulations lists six major characteristics ordinarily found in a pure corporation which, taken together, distinguish it from other organizations. These are (i) associates, (ii) an objective to carry on business and divide the gains therefrom, (iii) continuity of life, (iv) centralization of management, (v) liability for corporate debts limited to corporate property, and (vi) free transferability of interests. Whether a particular organization is to be classified as

¶ 495

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an association must be determined by taking into account the presence or absence of each of these corporate characteristics.

In addition to the major characteristics, section 301.7701-2(a)(1) of the regulations provides, in part, that "other factors" may be found in some cases which may be significant in classifying an organization as an association, a partnership or a trust.

The Internal Revenue Service will follow, in classifying organizations under section 7701 of the Code, the decision of the United States Tax Court in *Larson v. Commissioner* [CCH Dec. 33,793], 66 T. C. 159 (1976), *acq.*, I. R. B. 1979-12, 6, in which the court held that two real estate syndicates organized under the California Uniform Limited Partnership Act were partnerships for federal income tax purposes. In *Larson*, the court, while not concluding that additional "factors" are never relevant, found that some of the following "factors" were elements of the major characteristics and that the other "factors" were not of critical importance for purposes of classifying the partnerships.

(1) The division of limited partnership interests into units or shares and the promotion and marketing of such interests in a manner similar to corporate securities,

(2) the managing partner's right or lack of the discretionary right to retain or dis-

tribute profits according to the needs of the business,

(3) the limited partner's right or lack of the right to vote on the removal and election of general partners and the right or lack of the right to vote on the sale of all, or substantially all, of the assets of the partnership,

(4) the limited partnership interests being represented or not being represented by certificates,

(5) the limited partnership's observance or lack of observance of corporate formalities and procedures,

(6) the limited partners being required or not being required to sign the partnership agreement, and

(7) the limited partnership providing a means of pooling investments while limiting the liability of some of the participants.

Accordingly, as a result of the *Larson* case, the Service will not consider the factors enumerated above as "other factors" that have significance (independent of their bearing on the six major corporate characteristics) in determining the classification of arrangements formed as limited partnerships.

[¶ 6496] Rev. Proc. 79-16, I. R. B. 1979-12, 23.

[Code Secs. 61, 446 and 471]

**Inventories: Change in accounting method: Accrual basis farmers: Preproduction period expenses: Revenue Act of 1978.**—Section 352 of the Revenue Act of 1978 exempts accrual method farmers, nurserymen, and florists, not required to capitalize preproduction period expenses, from the requirement that they inventory the value of growing crops, trees, and plants and from the requirement that they obtain the Commissioner's approval prior to switching to the cash method of accounting. Rev. Ruls. 76-242 and 77-64 revoked. Rev. Proc. 78-22 revoked. Back references: ¶ 651.01, 656.025, 2771.376 and 2946.12.

Rev. Proc. 78-22, 1978-34 I. R. B. 26, provides a procedure whereby certain farmers, nurserymen, and florists may change their method of accounting to the cash receipts and disbursements method of accounting (cash method). Rev. Proc. 78-22 applies to such taxpayers that elected (or changed to) and employed the accrual method of accounting in reliance on the position described in I. T. 1368, I-1 C. B. 72 (1922) or O. D. 995, 5 C. B. 63 (1921). I. T. 1368 and O. D. 995 were revoked by Rev. Rul. 76-242, 1976-1 C. B. 132, as modified by Rev. Rul. 77-64, 1977-1 C. B. 136, for taxable years beginning on or after January 1, 1978.

Rev. Rul. 76-242 revoked the positions of the Internal Revenue Service set forth in I. T. 1368 and O. D. 995 by requiring farmers, nurserymen, and florists using an accrual method of accounting to inventory growing

crops, growing trees, or growing plants unless such taxpayers use the crop method because the Service determined that growing crops, trees, or plants are now capable of being inventoried.

Section 3.01 of Rev. Proc. 78-22 provides that farmers, nurserymen, and florists that elected (or changed to) and employed the accrual method of accounting in reliance on the position described in I. T. 1368 or O. D. 995 but do not desire to inventory growing crops, trees, or plants, as required of an accrual basis taxpayer by Rev. Rul. 76-242, will be permitted to change their method of accounting to the cash method by filing an application on a current Form 3115 (Application for Change in Accounting Method). The taxpayer must provide all the information required on the Form 3115 and the ad-

¶ 6496

79(10) CCH—Standard Federal Tax Reports

NAME: Do B MURDO DATE: 1/26/81

ADDRESS: 203 No. EWING - HELENA

PHONE: 442-1300

REPRESENTING WHOM? BUSINESS SECTION STATE BAR OF MONTANA

APPEARING ON WHICH PROPOSAL: SB 161

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

13.

Roger Lippy

---

36 S. East Chance Mall

442-4451

Business Law Section, State Bar of Mo.

SB 161

**SUPPORT?**

X

\_\_\_\_\_

\_\_\_\_\_

COMMENTS:

NAME: Ted J. Doney DATE: 1/26/81

ADDRESS: 36 S. Last Chance Mall

PHONE: 442-4451

REPRESENTING WHOM? Petro-Lewis Corp.

APPEARING ON WHICH PROPOSAL: S. B. 161

DO YOU: SUPPORT? X AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: \_\_\_\_\_



NAME: J.C. WEINSTEIN DATE: 1/26/81

ADDRESS: W/E/E.A.

PHONE: 27700

REPRESENTING WHOM? State Bar of Montana

APPEARING ON WHICH PROPOSAL: 161

DO YOU: SUPPORT?                      AMEND?                      OPPOSE?                     

COMMENTS: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY



NAME:

MIKE MEYER

DATE:

1/26/81

ADDRESS:

SECURITY BLDG HANNA

PHONE:

442 9430

REPRESENTING WHOM?

MTRA

APPEARING ON WHICH PROPOSAL:

SB 162

DO YOU:

SUPPORT?

AMEND?

OPPOSE?

X

COMMENTS:

Exhibit A

CROWLEY, HAUGHEY, HANSON, TOOLE & DIETRICH

ATTORNEYS AT LAW

500 ELECTRIC BUILDING  
BILLINGS, MONTANA 59101

P. O. BOX 2529  
TELEPHONE 252-3441  
AREA CODE 406

KEMP WILSON  
ROBERT EDD LEE  
STUART W. CONNER  
THOMAS F. TOPEL  
RONALD R. LODDERS  
JOHN L. GALLINGER  
STEVEN P. RUFFATTO  
ALLAN L. KARELL  
L. RANDALL BISHOP  
STEVEN J. LENNAN  
RONALD L. FRAZEE  
MARK D. SAFFY  
TERRY G. SPEAR  
CYNTHIA FORD  
LAURA A. MITCHELL  
SHERRY J. MATTEUCCI

CALE CROWLEY  
JAMES M. HAUGHEY  
NORMAN HANSON  
BRUCE R. TOOLE  
JOHN M. DIETRICH  
THOMAS N. KELLEY  
LOUIS R. MOORE  
GARELD F. KRIEG  
ARTHUR F. LANEY, JR.  
MYLES J. THOMAS  
GEORGE C. DALTHORP  
DAVID L. JOHNSON

January 22, 1981

Senator Joe Mazurek  
Senate Judiciary Committee  
Capitol Station  
Helena, Montana 59601

Dear Joe:

I understand that LC 1119, introduced by Senators Mazurek and Turnage, which would adopt the Revised Uniform Limited Partnership Act (1976), is set for hearing at 8:00 A.M. on January 26, before the Senate Judiciary Committee. If it were possible, I should attend the hearing to urge passage of the bill, as I am convinced that enactment of the Revised Act is of real importance to the growth and development of business and industry in Montana.

Since about 1970, and particularly during the last two or three years, I have handled the formation of many limited partnerships in Montana and have been called upon for opinions as to the limited liability of limited partners in partnerships formed in other states, which desire to do business in Montana. The use of limited partnerships in business transactions has grown rapidly in recent years, and the limited partnership form is very commonly employed by land developers and developers of oil and gas and other minerals. Many limited partnerships desire to operate in several or many states, but Montana's present Uniform Limited Partnership Act (which was originally written in 1916) is wholly inadequate to provide for multi-state operations.

Unlike LC 1119, our present Act does not provide for the registration or qualification in Montana of a limited partnership formed in another state. Consequently, the limited partners of such a foreign limited partnership cannot be certain that they will have limited liability while doing business in Montana. The effect of this uncertainty is to discourage foreign limited partnerships to do business in Montana. To cite an example, I represent one major limited partnership which plans to invest \$100,000,000.00 per year for the next six years in oil and gas exploration and development. The limited partnership will qualify to do business in Montana if the Revised Uniform Limited Partnership Act is enacted, but it presently is unwilling to invest funds in Montana under the existing Act.

Senator Joe Mazurek

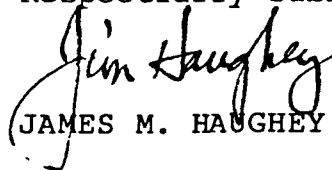
Page 2

January 22, 1981

In addition to the provision for qualification of foreign limited partnerships, the Revised Uniform Limited Partnership Act makes a number of changes in the law which are highly beneficial and are consistent with modern business practices.

I hope the Senate Judiciary Committee will recommend passage of LC 1119, because its enactment will encourage the investment of capital in Montana. In my opinion, the adoption of the Revised Act will also result in the expansion of employment opportunities in the state and in the increase in local and state tax revenues.

Respectfully submitted,

  
JAMES M. HAUGHEY

JMH/cas

Exhibit B

## REVISED UNIFORM LIMITED PARTNERSHIP ACT

The Uniform Limited Partnership Act was promulgated originally in 1916. It has been adopted in 45 jurisdictions and, with the Uniform Partnership Act, is the basis for law regulating partnerships in the United States. The limited partnership is distinguished from a general partnership by the existence of limited partners who invest in the partnership with liability limited to the amount invested. A general partner is liable individually for all the obligations of the partnership. In return for limited liability, the limited partner relinquishes any right of control or management of partnership affairs.

Limited partnerships have become, in 60 years, an important means of business organization and are used extensively. Over the 60 years of generally salubrious usage, this form of organization has encountered some problems. In 1976, a revision has been drafted, based on 60 years of extensive experience, to improve this method of organization even more.

The most important changes have been made in the scope of the limited partner's activities vis-a-vis the partnership. Under the original Uniform Limited Partnership Act, a limited partner could not contribute services to the partnership. He had to contribute property or other valuable obligations to obtain his status. Under the revision, services may now be contributed, as well as property or valuable obligations. The second change regards voting rights. The original Uniform Limited Partnership Act did not deny voting rights to limited partners, but neither did it permit them. The revision allows limited partners to be granted voting rights in the partnership agreement. These two provisions both change and enhance a limited partner's status.

When a limited partner can vote and contribute services, the question of control or participation in management becomes more critical. The Revised Act, therefore, takes special care in distinguishing those acts which do not alone determine control. The question of control is to be answered in the light of all facts and circumstances, but, if the limited partner does singly any of certain things, he or she is not by that fact liable as a general partner. These things include being a contractor for or agent of a general partner, consulting or advising a general partner with respect to partnership business, acting as a surety for the limited partnership, approving or disapproving an amendment to the partnership agreement, or voting on certain specific matters.

The object of these specific enumerations is to prevent unreasonable determinations that a limited partner takes part in the control of the business.

The original Uniform Limited Partnership Act provided only for a certificate of partnership. It made no mention of partnership agreements. The Revised Act changes the face of the partnership by changing the emphasis from the certificate to the agreement. Under the Revised Act, the certificate of limited partnership is confined principally to matters respecting the addition and withdrawal of partners and of capital. Other issues that are important are left to the agreement.

For example, a partner may lend money to and transact other business with a limited partnership as if the partner were a total outsider, except as otherwise provided in the partnership agreement. The partnership agreement determines the distribution of voting rights. The shares in profits and losses are decided in the partnership agreement. The partnership agreement becomes the important working document in the operation of the partnership.

There are other important changes, also, in the Revised Act. For example, a central registry is provided for limited partnerships. It is anticipated that the registrar for corporations and other business organizations, usually the Secretary of State, will also perform the function for limited partnerships. There is provision, also new, for registration of a name during the period of formation for a limited partnership. Another important addition guarantees limited partners the right to partnership records, a right not before accorded. This permits a limited partner to protect his or her investment in the partnership by keeping better track of the business itself. Also provided is a derivative action by limited partners against the partnership to redress mismanagement affecting a limited partner's interests. This would be very like a stockholder's derivative suit against a corporation. One of the historically apparent difficulties of limited partnerships has been protection of limited partner's rights. People have been induced to invest only to find that the investment has been squandered, and nothing could be done until general insolvency. These changes would curtail this problem.

Another significant, new contribution of the Revised Act is registration of foreign limited partnerships. Doing business interstate is a commonality for all business organizations, including limited partnerships. Therefore, the problems of jurisdiction and notice parallel those of corporations. Accordingly, a registration requirement for limited partnerships from other states doing business in an enacting state is established. This is required now in almost all jurisdictions for a foreign business

corporation. The requirement recognizes the scope of the limited partnership as utilized in the United States today.

The Uniform Limited Partnership Act, the 1916 version, has served well as the backbone of the law on limited partnerships. However, usages change, and new problems arise. The old Act is remarkably resilient, considering the historical record. Its revision now comes forward as a response to the changes that have occurred. It is the same business organization, but with characteristics for today's business. It should be good, at least, for another 60 years.

UNIFORM LIMITED PARTNERSHIP ACT  
(1976)

*Drafted by the*  
NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

*and by it*  
APPROVED AND RECOMMENDED FOR ENACTMENT  
IN ALL THE STATES

*at its*

ANNUAL CONFERENCE  
MEETING IN ITS EIGHTY-FIFTH YEAR  
AT ATLANTA, GEORGIA  
JULY 31 - AUGUST 6, 1976

WITH PREFATORY NOTE AND COMMENTS

**APPROVED BY THE AMERICAN BAR ASSOCIATION AT ITS MEETING IN  
ATLANTA, GEORGIA, FEBRUARY 13, 1979**

Nov. 1978

Exhibit D

Limited Partnerships—What's Next and What's Left?

BY PETER C. ASLANIDES, ALBERT J. CARDINALI,  
HARRY J. HAYNSWORTH, BRUCE S. LANE and  
GERALD V. NIESAR\*

Two significant events prompted this article, which is a distillation of a program presented by the Committees on Small Business, and Partnerships, of the Section of Corporation, Banking and Business Law, as presented at the 1977 ABA Annual Meeting in Chicago. The first event was the approval, in the Summer of 1976, of the *Revised Uniform Limited Partnership Act* (Revised ULPA) by the National Conference of Commissioners on Uniform State Laws. The Revised ULPA, intended to replace the original ULPA (which was approved in 1916 and had been adopted in every state but Louisiana), contains many important provisions that are designed to overcome certain legal problems that have, in the past, made the use of limited partnerships overly cumbersome and risky. At the present time the Revised ULPA has not yet been adopted in any state. However, widespread state adoption is expected during the next several years, *i.e.*, if current discussions between representatives of the Commissioners and the Internal Revenue Service result in an agreement that the Service will give to limited partnerships formed pursuant to the Revised ULPA the same favorable treatment it gives to limited partnerships formed pursuant to the 1916 ULPA under the tax classification regulations.<sup>1</sup> The second major event was the enactment of the Tax Reform Act of 1976 (TRA) which made substantial and in some cases radical changes in the tax treatment of limited partnerships. Many people have incorrectly concluded that the TRA makes it impossible to utilize limited partnerships for most types of business ventures in which they have been used in the past.

A. TYPES OF BUSINESS FORMED AS LIMITED PARTNERSHIPS

There are almost twice as many corporations as partnerships in the United States; and as a general rule there are more large corporations than partnerships. For example, as of 1973 approximately 225,000 corporations, 11.8 percent of the total number, compared to approximately 16,000 partnerships

\*Mr. Aslanides is a member of the New Jersey bar; Mr. Cardinali is a member of New York State and City bars; Mr. Haynsworth is a Professor of Law at the University of South Carolina; Mr. Lane is a member of the Ohio and District of Columbia bars; and Mr. Niesar is a member of the California bar.

1. Treas. Reg. §§ 301.7701-1 thru -3 (1960). These regulations, which provide the guidelines used by the IRS for determining whether a business entity will be taxed as a partnership under subchapter K or as a corporation, are discussed in detail in section E-2 of this Article. *infra*

*Exhibit 8*

PROPOSED AMENDMENTS TO SENATE BILL 162

1. Page 1, line 18.

Strike: "is claimed to"

Insert: "may"

2. Page 1, line 23.

Strike: "is"

3. Page 1, line 24.

Strike: "claimed to"

Insert: "may"

4. Page 2, line 1.

Following: "action."

Insert: "Whenever more than one person is found to have contributed as a proximate cause to the injury complained of, the trier of fact shall proportion the degree of fault among such persons."

STATE REPORTER

Box 749  
Helena, Montana

VOLUME 36

No. 14676

CONSOLIDATED FREIGHTWAYS  
CORPORATION OF DELAWARE, a  
Delaware Corporation,

Petitioner,

vs.

Submitted: June 7, 1979

Decided: Oct. 12, 1979

JUNE OSIER and MARGARET  
COLLINS,

Respondents.

NEGLIGENCE, Determination of Question Certified to Montana  
Supreme Court by Federal District Court: As a Matter of Sub-  
stantive Law, Does a Tortfeasor Have a Cause of Action for  
Contribution or Indemnity against Any Joint Tortfeasor Not  
Joined by Plaintiff as a Party Defendant

On Certification from: U. S. District Court, Missoula  
Division, Hon. Russell E. Smith, U. S. District Judge

For Petitioner: Corette, Smith, Dean, Pohlman & Allen,  
Butte

For Respondents: Poore, Roth, Robischon & Robinson and  
David J. Wing, Butte

Mr. R. D. Corette, Jr., argued the case orally for Petitioner;  
Mr. Wing for Respondents.

Opinion by Justice Sheehy; Justices Harrison and Daly con-  
curred; Chief Justice Haswell and Justice Shea dissented.

606p.2d 1076