

## OFFSHORE REVIEW- Summer 99

compiled by

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\* ARGUMENT FOR ASSET PROTECTION, OR JUSTICE SERVED?- A Colorado doctor has been found liable to the tune of \$7,000,000.00 in a malpractice action. The doctor visited with a patient on only a few instances, as back-up for the primary physician while the primary physician was unavailable. The patient suffered complications, and both the primary physician and the physician who covered for the primary physician were sued. A Denver jury determined that the covering physician was liable for not having followed up after the primary physician once again assumed his role as the primary care giver.

\* ASSET PROTECTION LEGISLATION ON THE HORIZON - Cases like those mentioned immediately above contribute to the strong and growing level of interest in asset protection planning and offshore asset protection trusts. The market for asset protection services continues to grow steadily and strongly, as does the interest level in offshore jurisdictions in attracting this business to within its borders. In addition to the approximately twenty OFCs that presently have specific asset protection-style legislation on the books, at least two others are presently examining the nature and extent of possible legislative approaches to this area of offshore financial services. Onshore, the Chicago Bar Association is forming a joint subcommittee to study the adoption of Alaska-style domestic asset protection law in the State of Illinois. Be watching future editions of Shore To Shore for more information on these developing APT jurisdictions.

\* THE LATEST SALVO - Approximately one year ago, the Organization for Economic Cooperation and Development released its report on "harmful tax competition." In October of this past year the Edwards Report, as commissioned by the UK Home Secretary in January of 1998, was released by Mr. Andrew Edwards in co-operation with certain Crown Dependencies. Most recently, K Foreign Secretary Robin Cook's 72-page White Paper, "Partnership for Progress and Prosperity," was officially published. Therein, the UK Foreign & Commonwealth Office has in essence embraced the OECD Report. Reaction from the offshore centers is coming slowly, but that should not be taken as a signal that the offshore jurisdictions are not taking the paper seriously. For example, Peter Hardy, the Financial Secretary at the Ministry of Finance in Bermuda, has commented that the Bermuda Ministry of Finance is paying close attention to those sections of the paper dealing with offshore financial services and international business regulation. Robert Mathavious, Director of Financial Services in the British Virgin Islands, is said to be considering its options in how best to respond to the paper.

\* BUSTED FLAT IN BATON ROUGE - According to the 1999 International Narcotics Control Strategy Report, released in April of this year by the U.S. State Department,

"phenomenal" progress has been made in anti-money laundering efforts over the course of the last decade. Nevertheless, the Report states that "[a]s jurisdictions have taken countermeasures, the criminals who generate criminal proceeds and the money launderers who disguise those proceeds have developed new and more sophisticated methods for moving money around the globe." The Report lists 47 countries as countries of "primary concern," including (among the "usual suspects") Australia, Canada, France, Germany, Israel, Japan, Netherlands, Switzerland, the United Kingdom and the United States. The Report can be downloaded from the Web Site for the U.S. State Department. See Noteworthy Web Sites under Shore To Shore UPDATE.

\* FATF REPORT - In 1989, Paris-based Financial Action Task Force issued 40 Recommendations that deal with money laundering. The Recommendations were revised in 1996. In its 1998-1999 Report on Money Laundering Typologies, the FATF reports that "important financial centres" appear unwilling to heed the Recommendations. The continued use of nominees and shell companies was cited, as were shelf companies. Such devices, it is claimed, are used to hide the movement of funds and the true beneficial ownership of the same. The Report can be downloaded from the FATF Website or from the Financial Crimes Enforcement Network ("FinCEN") Website. See Noteworthy Web Sites under Shore To Shore UPDATE.

\* MANX ADVOCATES - The Isle of Man has presented to the European Parliament a position paper advocating that legitimate and illegitimate uses of offshore financial centers be borne in mind in the process of mainland countries formulating initiatives aimed at offshore jurisdictions. The position paper presents the proper role played by OFCs in the world economic marketplace, yet recognizes that perceptions worldwide of what the proper role may be have changed over the years.

\* WE'RE MAD AS HELL AND NOT GOING TO TAKE IT ANYMORE - And speaking of which, the World Association of International Financial Centres (WAIFC) was formed last year to act as a lobbying force against the various anti-offshore threats that are developing, to wit: the OECD Report and the Robin Cook paper. The International Financial Centre in Vancouver, British Columbia, Canada has led the formation of the WAIFC, whose organizational meeting was held in London at the end of April. The Directors of the WAIFC include representatives from Labuan, Gibraltar, Vancouver, Bermuda, the Cayman Islands and Barbados.

\* BIRTH OF A CENTRE - In the interest of diversifying its economy, and with the backing of the Abu Dhabi Free Zone Authority, an offshore financial centre is being planned by Abu Dhabi, UAE, for Saadiyat Island. The Island's location is felt to be ideal for business in areas such as the Middle East, portions of Africa and Asia, and the former Soviet Union. Thus while a good portion of the world seems to be taking aim at the offshore financial centres, at least one government sees the many benefits associated therewith. The Abu Dhabi Free Zone Authority has calculated approximately \$170 billion in benefits to the UAE in the first quarter-decade of operation.

\* ST. LUCIA BILLS PENDING - The Caribbean nation of St. Lucia has been busy legislating to improve its position among competing jurisdictions in the Caribbean and elsewhere in the world. The initial draft of the first six pieces of legislation are the International Trusts Act, 1999; the International Banks Act, 1999; the International Business Companies Act, 1998; the International Insurance Act, 1999; and the Registered Agent and Trustee Licensing Act, 1999. Readers interested in receiving information should feel free to fax Mr. Nicholas John, LLb., of Nicholas John & Co., Castries, St. Lucia, West Indies at +758 451 9236.

\* BELIZE BILLS PENDING - Belize is also busy with pen in hand. On January 29, 1999 the Government of Belize introduced into the House of Representatives "various pieces of legislation which will help ensure that Belize remains at the forefront of the offshore financial services industry and also to maintain its reputation as a jurisdiction of professional integrity. Draft legislation includes the International Financial Services Commission Bill; the International Insurance Bill; the Mutual Funds Bill; the Protected Cell Companies Bill; the Limited Liability Partnerships Bill; the International Business Companies (Amendment) Bill; and the Retired Persons (Incentives) Bill. Additional information may be obtained by faxing David Jenkins, MOI, at Belize Offshore Services Limited, Belmopan, Belize, +501 8 22989.

\* GUERNSEY ANNOUNCES NEW POSITION - The Guernsey Financial Services Commission has appointed its first Director of Fiduciary Services and Enforcement to oversee the supervision of the trust and company administration sector of the financial services sector in the Bailiwick. Mr. Talmai P. Morgan is a graduate of Cambridge University with an honour degree in Economics and Law. He qualified as a Barrister in London in 1976. He will be mainly responsible for the introduction of a new regulatory regime for trust and company administration under pioneering legislation which the Commission is preparing in consultation with the Crown Officers and the financial sector of the economy.

\* PROTECTED CELLS SELL - During 1998 eleven Protected Cell Companies were formed under the Guernsey Protected Cell Company provisions. Among the eleven Cell Companies, there are a total of 30 cells. Two new "PCCs" were formed in December of 1998, for insurance purposes. Those involved with PCCs in Guernsey include familiar names such as Guardian Insurance, Chubb, and Winterthur.

\* PROTECTED CELLS SELL, PART DEUX - The State of Delaware recently enacted legislation permitting "series" limited liability companies ("SLLCs"). SLLCs allow a person to form an LLC with any number of underlying "series." Each series is like a cell within the LLC that is insulated from the other cells of the same LLC. A particular cell's assets will not be adversely affected by debts or liabilities of the other cells within that LLC. Under the Delaware legislation, each cell can have different members.

\* ANGUILLA ACORN - A computerized company registration system has been launched in Anguilla. The system, known as ACORN, is a cooperative effort between the

Government of Anguilla and the Anguilla Financial Services Association. The system is an interactive system that facilitates instantaneous incorporation of various types of corporate entities available under Anguilla's legislation. It will be operative on a 24/7 basis. Details may be obtained at [registrar@angillaoffshore.com](mailto:registrar@angillaoffshore.com).

\* AND FINALLY...With all the fuss about the new millenium, it seems as if the first millenium is being ignored - but not by everyone. Consider books like "AD 1000: A World on the Brink of Apocalypse," and "The Last Apocalypse: Europe at the Year 1000 AD." Based on these books, perhaps not much has changed over the past 1,000 years. Agrimony is an example, a yellow-flowered herb that Anglo-Saxons used around the first millenium as a medieval Viagra." Our Anglo-Saxon forefriends also ate rye bread that was moldy with ergot, an ingredient of LSD. So, what's the tie-in to the offshore world? Reportedly, there is a commemorative 1000 A.D. coin depicting a monk writing at his desk that is legal tender in the Cook Islands.