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## DIMINISHED PROTECTION FOR LLCs: FLORIDA SUPREME COURT RULING WEAKENS ASSET PROTECTION PROVIDED BY LLCs

Florida limited liability companies are often utilized in Florida to operate on-going businesses as well as for estate planning and asset protection purposes. In its recent ruling, *Olmstead v. Federal Trade Commission*, the Florida Supreme Court held that judgment creditors may attempt to obtain an order from a court requiring an LLC owned by a single member to surrender its assets to the creditor in order to satisfy the debt of the single member. The ruling is a departure from current law, entitling the judgment creditor to obtain only a charging lien against a member's interest in the LLC (granting the judgment creditor only the right to the proceeds resulting from a distribution or disposition of a membership interest but no right to the day-to-day control of such interest property owned by the LLC).

The distinction is not insignificant. With a charging lien, the judgment creditor obtains only the rights of an assignee of the membership interest. Under the Florida Statutes and most properly-drafted Operating Agreements, substitute members do not have the right to participate in the affairs of the company or vote on matters properly before the members without first obtaining the consent of remaining members. This protection was granted to shield the interests of members from the debts of their fellow members and to prohibit the intrusion into the workings of the company by outside creditors. Until the Court's recent ruling, it was viewed that such protections extended to single-member LLCs.

In the recent case, the Court reasoned that a judgment creditor who acquires all right and title to a single-member LLC should not be limited to a charging order because such limitation has no practical application where there are no other members whose interests could be affected by the admission of a substitute member (the judgment creditor).

While the rationale behind the decision can be reasonably accepted, of perhaps greater concern is the application of a similar rationale to multi-member LLCs. As identified by the dissenting Justices, the Florida Statutes make no distinction between protections available to single-member LLCs and those available to multi-member LLCs. Accordingly, it is possible that courts may extend similar rights of judgment creditors of multi-member LLC interests, especially where the Operating Agreement does not limit the rights of substitute members (such as judgment creditors). The theory is that if there are no limitations on substitute members, a judgment creditor should be no different than any third-party substitute member.

Persons considering using LLCs for asset protection purposes should consider the Supreme Court's recent ruling and be mindful of the potential future application to multi-member LLCs. Those who currently hold interests in multi-member LLCs would be wise to review their Operating Agreement to ensure that substitute members cannot be admitted without the consent of the remaining members and, if no such provision exists, should consider amending their Operating Agreements. Those utilizing single-member LLCs for asset protection purposes should consider seeking alternate forms of asset protection including the conversion of single member LLCs to multi-member LLCs or limited partnerships.

For questions on this or other legal matters or for assistance in reviewing or amending an Operating Agreement, one should consult his or her legal representative.

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