Fairfield
UNIVERSITY

North East Journal of Legal Studies

Volume 12 *Fall 2006* Article 4

Fall 2006

Family Limited Partnerships and Limited Liability Companies as Estate Planning Devices

Richard J. Kraus
Pace University, rkraus@pace.edu

Roy Girasa
Pace University, rgirasa@pace.edu

Follow this and additional works at: https://digitalcommons.fairfield.edu/nealsb

Recommended Citation

Kraus, Richard J. and Girasa, Roy (2006) "Family Limited Partnerships and Limited Liability Companies as Estate Planning Devices," *North East Journal of Legal Studies*: Vol. 12 , Article 4.
Available at: https://digitalcommons.fairfield.edu/nealsb/vol12/iss1/4

This item has been accepted for inclusion in DigitalCommons@Fairfield by an authorized administrator of DigitalCommons@Fairfield. It is brought to you by DigitalCommons@Fairfield with permission from the rights-holder(s) and is protected by copyright and/or related rights. You are free to use this item in any way that is permitted by the copyright and related rights legislation that applies to your use. For other uses, you need to obtain permission from the rights-holder(s) directly, unless additional rights are indicated by a Creative Commons license in the record and/or on the work itself. For more information, please contact digitalcommons@fairfield.edu.

FAMILY LIMITED PARTNERSHIPS AND LIMITED LIABILITY COMPANIES AS ESTATE PLANNING DEVICES

by

Richard J. Kraus*
Roy J. Girasa**

INTRODUCTION

A family limited partnership ("FLP") or a family limited liability company ("FLLC") may produce significant estate and gift tax savings, if properly formed and operated. A great deal of preparation and caution, however, must be practiced to protect the client.

This article proposes to describe formation of the entities, the desirability of minority and marketability discounts available and to observe a number of tax difficulties presented because of Internal Revenue Code ("Code") proscriptions[1] .

FORMATION OF THE ENTITIES: PLANNING

The Internal Revenue Code clearly indicates that an FLP or FLLC may not be formed exclusively for tax saving purposes if the entities seek to escape income tax liability[2]. The Internal Revenue Service has applied the same rationale to attempt to circumvent liability for estate and gift taxes. The Service argues that section 2036(a) of the Code will, in certain circumstances, compute FLP or FLLC assets as part of the decedent transferor's estate[3]. That Section provides

> (a) General rule. The value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration for money or money's worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death --
> (1) the possession or enjoyment of, or the right to the income from, the property,
> or
> (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

In *Estate of Albert Strangi, Deceased, Rosalie Gulig, Independent Executrix, v. Commissioner of Internal Revenue*[4], the United States Tax Court decided that the decedent's attorney-in-fact, Micheal J. Gulig, improperly used a Texas family limited partnership and corporation through forms supplied by a vendor to attempt to protect the assets of Mr. Strangi from creditors, to plan his estate and to limit tax liability. The court reasoned that the Code requires that all of

*Professor of Law, Lubin School of Business, Pace University, New York.

** Professor of Law, Lubin School of Business, Pace University, New York.

Albert Strangi's assets be included in his estate for gift or estate tax purposes.

> The record reveals no part of the transferred property was exempt from the rights or enjoyment retained by the decedent. The relevant documents make no distinction among the various assets contributed, nor does the evidence reflect that Mr. Gulig looked to particular assets in determining whether amounts should be distributed. The preponderance of the evidence therefore establishes that the full value of the transferred assets is includable under section 2036 (a)[5].

A number of precautions, however, will assist the practitioner in the formation of the FLP or FLLC in order to design an entity to meet family needs and to avoid the results of the *Strangi* decision.

The partnership or company should never be formed exclusively for tax saving purposes; all interested family members should meet with the practitioner to examine the reasons for forming an entity. These reasons include:

1. The protection of assets from claims of creditors so that those creditors may obtain only assignee's rights;
2. Divorce distribution of entity interests which are passive and subject to transfer restriction;
3. Continued control of the assets despite the fact that children now possess the interests of a limited partner;

4. Protection of gifts through the use of fractional interests rather than outright gifts;
5. Insurance that interests remain in the family because of their lack of marketability and minority status;
6. Encouragement of family communications concerning business matters;
7. Avoidance of out-of-state probate of assets includable as personal property in the entity;
8. Mandate of alternate dispute resolution procedures in the documents to prevent public law suits among interest owners;
9. Assurance of management continuity;
10. Utilization of the larger business entity to increase the value of family assets.

The practitioner should ensure that the documents strictly comply with statutory requirements and that assets be re-titled and not be co-mingled with other assets.

The practitioner also should advise the family to hold regular business meetings, fully examine financial reports, prepare FLP or FLLC tax returns and issue income statements to FLP partners or to FLLC members[6].

FORMATION OF THE ENTITIES: MECHANICS

New York and a number of other jurisdictions require similar procedures to form an FLP and a FLLC. In particular, a Certificate of Limited Partnership for an FLP and Articles of Organization for a Limited Liability Company must be filed with the Secretary of State or other state of authority, indicating the name of the entity, its principal place of business within the state, an identification of each general partner for an FLP or whether the FLLC is to be managed by members or managers, and the designation of the Secretary of State or other

public official as agent for service of process[7].The entities may be organized for any lawful business purpose, but do not require that the business operate for a profit[8].

Accompanying documents, furthermore, should describe the fact that more than one transferor has made a contribution to the FLP or FLLC. Ideally, a mother, father and children should make contributions even if the parents give to the child the funds needed to make the FLP or FLLC contribution[9]. After the contribution is made, a period of approximately six months should elapse before gifts of interests in the FLP or FLLC are assigned to a family donee[10].

The practitioner, finally, must carefully draft the partnership or operating agreement: an absolute prohibition on transfer should never be indicated but a right of first refusal will protect family members and at the same time clearly indicate that the gifted interest qualified as a gift of the present interest; the fiduciary duties of general partners or managers should be clearly stated and not limited; distributions from net available cash in accordance with percentage interests should be mandated; liquidation and dissolution rights should be carefully circumscribed so as not to reside in any one individual or group of individuals; gifts should clearly be those of an assignee interest rather than an interest in the entity itself[11].

MINORITY AND MARKETABILITY DISCOUNTS: RESULTS OF PROPER PLANNING

A minority interest in a business entity is obviously worth less than a controlling share. The minority owner cannot solely elect general partners or managers, nor force the liquidation of an entity. The hypothetical buyer proposed by the Code, therefore, will not pay full value for the investment.

The Tax Court has permitted lack of control or minority discounts as a matter of course[12]. The Court has similarly permitted lack of marketability discounts because limited interests are not readily marketable[13]. If the practitioner strictly follows formation procedures and reminds clients to conduct business in the manner described in the partnership or company agreement, then these discounts will be available to the owners and members of an FLP or FLLC.

Several cases illustrate the application of discounts to reflect the true economic value of the interest being transferred at the date of death of the decedent. *Charles T. McCord and Mary S. McCord, Donors v. Commissioner of Internal Revenue*[14] indicates that discounts may be allowed not only for minority and marketability purposes but also because an interest rather than a share is transferred. On June 30, 1995 Charles T. McCord, Jr., Mary S. McCord, his wife, and their four children- Charles III, Michael, Frederick and Stephen formed a Texas limited partnership. This FLP contained the children as general partners, the parents as class A limited partners, and the parents and a separate partnership formed by the children as class B limited partners. The assets of the FLP included stocks, bonds, real estate, and oil and gas investments among other business interests. 65 percent of the holdings were marketable securities, 30 percent consisted of real estate limited partnerships and the remaining 5 percent included the oil and gas investments. The limited partnership agreement indicated that the termination date of the FLP was December 31, 2025 unless sooner terminated by the agreement of the two classes of shareholders.

The contribution of each of the parties occurred in accord with the following classification:

Class and Contributor Interest	Contribution	Percentage
Class A Limited Partners:		
Mr. McCord	$10,000	none
Mrs. McCord	10,000	none
General Partners:		
Charles III	40,000	0.26787417
Michael	40,000	0.26787417
Frederick	40,000	0.26787417
Stephen	40,000	0.26787417
Class B Limited Partners:		
Mr. McCord	6,147,192	41.16684918
Mrs. McCord	6,147,192	41.16684918
McCord Brothers	2,478,000	16.59480496
Total	$14,952,384	100.0

The agreement, furthermore, indicated that a partner may assign a partnership interest to certain permitted assignees including family members and charitable organizations as well as to assignees other than a permitted assignee with the consent of the other partners. The agreement explicitly provided that, regardless of the identity of an assignee, no such party may obtain the status of a partner without unanimous consent of all of the FLP partners.

On November 20, 1995 an assignment was made to the charitable Southfield School Foundation. This transfer included an assignment of a class A partnership interest and admission of the foundation as a class A limited partner with the consent of all the FLP partners. This assignment was of course tax exempt.

On January 12, 1996 further assignments occurred. Class B limited partnership interests were assigned to two other charities-the Communities Foundation of Texas, Inc. and Shreveport Symphony, Inc.-and to four trusts created for the benefit of the McCord children. These assignments contained no language of admission of the assignees as partners of the partnership. The transfers, therefore, were mere assignments rather than conveyances of partnership rights and interests. The assignments to the two charities were once again tax exempt. The assignments to the children's trusts, however, would be subject to gift and estate tax, though a discount would be allowed for minority and marketability purposes. The Tax Court acknowledged additionally that a mere assignee's interest produces an additional allowance for discount.

Estate of Weinberg v. Commissioner[15] describes interests in the Hill House FLP which owned and operated an apartment complex. The complex contained an eleven story building with one hundred and eighty-eight apartment units, an office suite, an underground parking garage, and a swimming pool. Only three of the units in the complex were not rented at the time of the decedent's death. A marital trust for the decedent owned a 25.235% interest in the Hill House FLP. The decedent had a general power of appointment over this interest at the time of her death. She exercised this power of appointment in her will by indicating that the assets be distributed to her trustees in accord with the provisions of a November 2, 1984 inter-vivos trust, or in favor of her executors if the trust no longer existed at the time of her death.

Both the IRS and the executors of the estate agreed that the marketability and minority interest discounts should apply to the decedent's share in the FLP. The Tax Court, however, disagreed with both the petitioner's expert and the respondent's expert in computing the value of that share. The Court

computed the value of the interest by combining a 25% net asset value and a 75% capitalization of earnings method value to determine that the fair market value of the limited partnership interest. The minority capitalization value was $1,333,292.55, the minority net asset value was $303,770.75. The total value of $1,637,063.30 less a marketability discount of twenty percent interest was worth $1,309,658.65.

Peracchio v. Commissioner[16] illustrates that FLP assets which consist of money market funds and marketable securities will produce varying minority interest and marketability discounts. At the time of the decedent's death, the assets which the decedent had contributed to the family limited partnership consisted of the following:

Asset Type	Fair Market Value	Percentage
Cash & money market funds	$ 883,622	44.0
U.S. Government bond funds	7,988	0.4
State and local bonds	41,750	2.1
National Muni bond funds	101,145	5.0
Domestic equities	877,179	43.6
Foreign equities	98,686	4.9
Total	$ 2,010,370	100.0

The Tax Court determined that the nature of the assets would not greatly affect minority interest value so that the discount permitted was a mere 6-percent. The Court, however,

indicated that an interest in an FLP would seriously affect marketability so that the discount permitted for lack of marketability was 25-percent.

ESTATE TAX DIFFICULTIES: INTERNAL REVENUE CODE SECTION 2036(a)

Two recent United States 5th Circuit Court of Appeals decisions highlight the tax advantages available to FLPs and FLLCs. The cases concentrate upon the two impediments to estate tax reduction present in Internal Revenue Code Section 2036(a): the transfer of property to the family entity must be a bona fide sale for an adequate consideration, and the donor may not retain an interest in the property transferred. At least one of these two cases also refers to the additional diminution that an assignee's interest, as opposed to a partnership interest, would have upon valuation of the property transferred for estate tax purposes.

Bona Fide Sale for an Adequate Consideration: Kimbell

On May 20, 2004 Case No. 03-10529 *David A. Kimbell, Sr., Independent Executor Under the Will of Ruth A. Kimbell, Deceased v. United States of America* was filed with the Clerk of the Court for the United States Court of Appeals, 5th Circuit.[17] The Court in that case concluded that Code Section 2036(a) does not prevent family members from entering a bona fide transaction in which a transfer of assets may occur in return for pro rata FLLC and FLP interests. The decedent, Ruth A. Kimbell, was 96 years of age at her death on March 25, 1998. In 1991 Mrs. Kimbell, in consultation with her son, the present Executor of her estate, established a living revocable trust administered both by herself and her son as co-Trustees. In January 1998, a few months before her death, David Kimbell and his wife formed an FLLC with the Trust as a co-member. The Trust contributed $20,000 for a 50%

interest: Mr. Kimbell and his wife each contributed $10,000 for a 25% interest apiece. David Kimbell solely managed the FLLC.

Later in January 1998, the Trust and the FLLC formed an FLP. The Trust transferred approximately $2,500,000 in cash, oil and gas working and royalty interests and other assets for a 99% pro rata limited partner interest. The FLLC transferred approximately $25,000 in cash for a 1% pro rata general partner interest.

The entity creations were well planned. The FLLC and the FLP did not contain all of Mrs. Kimbell's assets. She retained over $450,000 in assets outside of those entities in order to meet her personal expenses. She retained control of the Trust assets through her role as Co-Trustee so that the transfer by the Trust to the entities was a transfer by Mrs. Kimbell.

The FLP agreement explicitly stated that the purposes of the FLP were to:

> increase Family wealth; establish a method by which annual gifts can be made without fractionalizing Family Assets; continue the ownership and collective operation of Family Assets and restrict the right of non-Family members to acquire interests in Family Assets; provide protection to Family Assets from claims of future creditors against Family members; prevent transfer of a Family members interest in the Partnership as a result of a failed marriage; provide flexibility and continuity in business planning for the Family not available through trusts, corporations, or other business entities; facilitate the administration and reduce the cost associated with the disability or probate of the estate of Family members; promote the Family's knowledge and communication about Family Assets; provide resolution of any dispute which may arise among the Family in order to preserve Family harmony and avoid the expense and problems of litigation; and consolidate fractional interests in Family Assets.[18]

Even though the FLP agreement provided that the general partner, the LLC, owed no fiduciary duty to the FLP, the agreement did state that the general partner owed a duty of loyalty and care. The Trust as limited partner had no right to withdraw from the FLP until or even receive a return of contributions until the FLP was terminated, which could occur before its forty year term only by unanimous consent of all classes of partner. The agreement finally provided that 70% in interest of the limited partners had the right to remove the general partner and that a majority in interest of the limited partners has a right to elect a new general partner.

The Court of Appeals, in reaching its decision concerning the bona fide sale of Mrs. Kimbell's assets for an adequate consideration, determined that those assets must not be recaptured into her estate for estate tax purposes in accord with the provisions of Internal Revenue Code Section 2036(a).

The Court indicated that Mrs. Kimbell's contribution of more than 99% of her assets into the FLLP to be managed by her son, as they were before the transfer, was not a mere recycling of value. The interest in the FLP, therefore, which Mrs. Kimbell received was a transfer for a full and adequate consideration. The Court noted that the Tax Court has many times rejected the argument that a discounted valuation of a pro

rata partnership interest forbids a court finding that such an interest is adequate consideration for the assets transferred.

The transfer, furthermore, was made in good faith and that a bona fide business interest was accomplished through the transfer of assets to the FLP. Those business interests were cited in the FLP agreement but testimony from Mrs. Kimbell's business advisor reinforced the business reasons for the creation of the entity. Mr. Michael Elyea, the advisor, indicated that Mrs. Kimbell first discussed the creation of a limited partnership in the early 1990's, about the time that the living trust was formed. In particular, a living trust would not provide creditor protection, or insulate oil and gas property owners from personal environmental liability. Mrs. Kimbell also desired to keep the assets in one pool, thereby increasing their value and to provide divorce protection. Mrs. Kimbell also wanted the assets to be continuously managed and to have provisions in the agreement for management succession. She preferred arbitration or mediation in settling family disputes.

Retained Interest: Kimbell

The Court of Appeals observed that the second exception under 2036(a) permits the FLP or FLLC transfer to escape taxation if the transferor did not retain an interest in the asset transferred. If an interest is retained, the transfers are recaptured into the estate of the decedent who retained any possession or right to income from the transferred property or retained the right to designate who would possess or enjoy that income. The agreement to retain may be expressed or implied from the control over the entity that continues.

The Court indicated that the Kimbell FLP had already qualified for exception under the bona fide sale for an adequate consideration rule. It now decided that the FLLC qualified for

exception under the retained interest rule. Mrs. Kimbell, according to the Court, did not retain sufficient control over the FLLC merely because of her 50% interest and her son David had sole management powers. Mrs. Kimbell, therefore, did not retain the right to enjoy or to designate who would enjoy the FLLC property.

Assignee or Partnership Interest: Kimbell

The Court, however, refused to decide whether Mrs. Kimbell's interest in the partnership was an assignee's interest or a limited partnership interest for the purposes of estate tax evaluation. The District Court had not yet examined the issue and the Court of Appeals refused to do so.

Bona Fide Sale for an Adequate Consideration: Bongard

On March 15, 2005 the United States Tax Court sitting in Texas decided *Estate of Wayne C. Bongard v. Commissioner of Internal Revenue.*[19] A majority of the court in this case also concluded that Code Section 2036(a) did not prevent the decedent and his family from forming the Bongard Family Limited Partnership for valid business non-tax purposes. This partnership obtained assets by way of bona fide sale of corporate stock to the partnership. The transfer of Class B membership units in a holdings company to the partnership, however, did not satisfy the bona fide exception. The decedent's estate, furthermore, retained an interest in the Class B membership units.

Section 2036(a) of the Internal Revenue Code indicates as a general rule that the value of a decedent's gross estate shall include all the property held by the decedent, including any property held by trust or otherwise, in which the decedent has

retained the possession or enjoyment of, or the right to income from the property or the right to designate persons who shall possess or enjoy the property. The Tax Court observed that Section 2036(a) may be applied to an evaluation of the estate if three conditions are met: (1) the decedent transferred the property while alive; (2) the transfer was not a bona fide sale for an adequate and full consideration; and (3) the decedent retained an interest in the transferred property which was not alienated before death.

In the case of family limited partnerships the bona fide sale requirement occurs when significant non-tax reasons create the partnership and the transferors who created the partnership receive interests proportionate to the values of the properties transferred. Mr. Bongard consulted with a number of business experts before creating a series of corporations, trusts and holding companies in order to increase the competitiveness of a family owner corporation. Additional capital other than bank loans or business income reinvestment sources was required. A public or private offering would accomplish this goal of increased business liquidity. One particular business expert drafted a memo and created a check list which detailed the specific steps: a second corporation was formed, incentive stock options were established; the decedent and the decedent's trust transferred the stock and stock options to a holding company in exchange for interest in the holding company proportionate to the stock shares which they had owned. The values of the shares held by the decedent and the trust helped to attract potential investors.

The Court concluded that Mr. Bongard's transfer of corporate stock to the holding company satisfied the bona fide sale exception of Section 2036(a). No inquiry needed to be made, therefore, concerning any retention of taxable interest in

class A Holding Company membership shares held by various trusts established by the decedent.

The decedent's transfer of Holding Company class B membership units to the Bongard Family Limited Partnership (BFLP), however, was not a bona fide sale for adequate and full consideration. BFLP never had an investment plan and never functioned as a business; the partnership additionally did not use the partnership device for credit protection nor to perform any management function.

Retained Interest: Bongard

The decedent continued to retain a 91% BFLP interest and did not make any gifts of that interest prior to his death. He also controlled the ability to liquidate BFLP's sole asset, the class B Holding Company's membership units. Because the decedent had the ability to decide when membership units and their underlying corporate stock would be redeemed, he retained the right to control those units now held by BFLP.

Assignee or Partnership Interest: Bongard

The Court in this case never decided whether Mr. Bongard's interest in the property assigned to the limited partnership was in fact an assignee or partnership interest for the purposes of estate tax evaluation. In this case the Court applied the discounts provided by the parties to the suit in their stipulation to settle issues. The Corporate stock, on its alternate valuation date, May 16th, 1999 was determined to be $32.24 per share. The parties then stipulated that the Holding's Company membership units represented by the corporate shares would be valuated in the following manner:

1. 287,620 Holding Company Class A nontaxable Units (minus 13% lack of control discount, 17.5% lack of marketability discount) – [{$32.24 – ($32.24 x .13)}– {($32.24 – ($32.24 x .13)} x .175}] = $23.14
   $23.14 x 287,620 = $6,655,527.
2. 4,621,166 Holding Company Class B taxable Units (minus additional lack of voting rights – a possible indication of an assignee rather than partnership interest) – [$23.14 – ($23.14 x .05)] = $21.98
   $21.98 x 4,621,166 = $101,573,229.[20]

CONCLUSION

The FLP and FLLC forms of business entity create desirable options for the estate plans of individuals but require practitioner and family preparation for their proper utilization. The practitioner must assist the family in forming the entity for business and financial reasons such as the protection of assets, continued family business control, protection of the family business from subsequent divorce distributions, the assurance of management continuity, and the use of a larger or alternate business entity to increase the value of family assets. Two recent cases announce certain rules: a family may certainly form a limited partnership or limited liability company for the purposes of estate planning, but such formation may not be exclusively for tax saving purposes. In order to avoid estate tax problems, the entities must be formed so that the decedent's estate has transferred the property for a bona fide consideration; the decedent and the estate have not retained an interest in the property; and the property is clearly described as a partnership interest or an assignee's interest.

ENDNOTES

[1] INTERNAL REVENUE CODE of 1986 as amended (IRC) Sections 2036(a) and following.

[2] IRC Section 701.

[3] *Knight v. Commissioner* 115 T.P.C. 36 (2000).

[4] *Estate of Strangi v. Commissioner* 115 T.C. 478, 293 F.3d 279 (5th Cir. 2002,T.C. Memo 2003-145)

[5] *Id.*

[6] FLP and FLLC formation suggestions appear in a number of studies including Gerald F. Stack, Esq., *The Family Limited Partnership and Limited Liability Company*, NYSBA/CLE 1-238 (2004); Bradford Updike, *Making Sense of Family Limited Partnership Law After Strangi and Stone, A Better Approach to Planning and Litigation Through the Bona Fide Transaction Exception,* 50 S.D. L. REV. 1, 37-39 (2005); Owen G. Fiore, *Valuation Adjustment Strategies*, 5 JOURNAL OF PRACTICAL ESTATE PLANNING, No. 2 (April-May, 2003).

[7] NEW YORK PARTNERSHIP LAW, Sections 121-201: NEW YORK LIMITED LIABILITY COMPANY LAW, Sections 201,203.

[8] *Burstein v. Central Hudson Associates*, 665 N.Y.S. 2d 262 (1st Dept. 1997); *United National Insurance Co. v. Waterfront N.Y. Realty Corp.*, 907 F. Supp. 663 (S.D.N.Y. 1995); *In re Frye v. Manacare* Ltd, 431 So.2d 181 (Florida District Court of Appeals 1983).

[9] Stack, op. cit. at page 95.

[10] *Id.*

[11] *Kerr v. Commissioner,* 113 T.C. 449 (1999); *Estate of Jones v. Commissioner,* 116 T.C. 121 (2001); *McCord v. Commissioner,* 120 T.C. 358 (2003).

[12] *Estate of Newhouse v. Commissioner,* 94 T.C. 193 (1990).

[13] *Estate of Davis v. Commissioner,* 110 T.C. 530 (1998); *Estate of Simplot v. Commissioner*, 112 T.C. 130 (1999).

[14] 120 T.C. 358 (2003).

[15] T. C. Memo 2000-51.

[16] T. C. Memo 2003-280.

[17] *Kimbell v. United States*, 244 F.Supp.2d 7000 (N.D. Texas 2002).

[18] *Id.* at 7003.

[19] *Estate of Wayne C. Bongard, Deceased, James A. Bernards, Personal Representative, Petitioner v. Commissioner of Internal Revenue, Respondent*, 124 T.C. No. 8 (2005).

[20] *Id.* at 62.

THE PAY GAP TAX CREDIT AS A REMEDY FOR GENDER PAY DISPARITY

By
M. Colleen Goble*
And
Dr. Sharlene A. McEvoy**
And
Dr. Catherine C. Giapponi***

I. INTRODUCTION

Before the 1960s, women either stayed home to raise children or worked in professions that were considered 'women's fields' such as nursing or teaching. Career opportunities were limited. Former Supreme Court Justice Sandra Day O'Connor graduated third of 102 students from Stanford Law School but when she applied for a position at a law firm, she was asked to fill a secretarial position instead.[1] Although women have entered the work force in large numbers in the past forty years and are better educated and have more experience than ever before, their salaries lag behind those of men's when comparing similar education, experience and occupation.[2]

Corporations have had over forty years to put in place mechanisms to ensure that women and men are treated equally in pay and promotions. In 2006, women earn on average 77

* Senior, University College at Fairfield University.
** Professor of Business Law, Charles F. Dolan School of Business, Fairfield University.
***Assistant Professor of Management, Charles F. Dolan School of Business, Fairfield University.