



President's Message

Stephanie E. Sanderson-Braem, Esq.

Welcome everyone to the 83rd year of the Philadelphia Estate Planning Council ("PEPC"). It is my honor to have been elected and to serve as your current President. I joined PEPC in 2003 as I started my legal career at Stradley Ronon. Since joining PEPC, I have benefited greatly from the professional development PEPC has brought to my career and am thankful to have this opportunity to give back in such a significant way. My involvement in PEPC started by joining and working on various PEPC Committees to then serving as a board member for over seven years to now having the opportunity to lead this prestigious organization. As I watched and admired those Presidents who took the podium before me, it is truly a privilege to take these reigns and have the ability to follow in their footsteps.

This organization would not be where it is today without the strong leadership and commitment of our past Presidents. I want to thank them for their hard work, dedication and advancement of PEPC. Last year presented many challenges as we continued to deal with the consequences of the pandemic. I want to thank immediate Past President, James Revels, for his guidance in moving this Council forward through those challenges. I am proud to say that throughout last year we saw a continued increase in our in-person attendance numbers.

I am thankful for the impressive Board that serves with me and am fortunate to have these members, especially those on the Executive Committee, lead this Council through this program year and forward. The Executive Committee is as follows:

Vice President: Christopher Borden, CFP – Stedmark Partners at Janney Montgomery Scott LLC

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Secretary: Alan Weissberger, Esq. – Hirtle, Callaghan & Co.

Immediate Past President: James Revels, CPA, MST, AEP – KPMG LLP

My goal as President this year is to have programs that deliver nationally recognized speakers who discuss topics that are timely and relevant to our practices. So far this year we have had two in-person, highly educational programs with speakers of national prominence who are also presenters every year at Heckerling. In September, Paul Lee, Chief Tax Strategist of The Northern Trust Company, spoke on "Goblins Lamentation List: Unscrambling 'Installment Obligations.'" In October, Bernard Krooks, J.D., who is the founding partner of the New York law firm Littman Krooks LLP, spoke on "Elder Law and Special Needs Planning." Our November program was

continued on page 3

Circuit Split on Inclusion of Life Insurance Proceeds in Valuation of Closely Held Business Subject to Stock Redemption Agreement

Andrew J. Barron, Stradley Ronon Stevens & Young, LLP

In June, the Eighth Circuit Court of Appeals issued its opinion in *Connelly v. United States*,¹ creating a split with the Eleventh Circuit on whether life insurance proceeds should be included in a fair market value determination of closely held stock owned by a decedent. In each case, the shares were subject to a stock redemption agreement funded by insurance on the life of the decedent, payable to the company. Although the agreements included mechanisms

continued on page 4

IN THIS ISSUE:

What's In A Name?	6
Lies, Damn Lies and Illustrations	8
Artificial Intelligence in Estate Planning – Challenges and Opportunities	11
From the NAEPC Engagement Committee	15
Event Spotlights:	16
The Philadelphia Estate Planning Council Welcomes New Members	20



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UPCOMING EVENTS

Holiday Celebration

Thursday, December 14, 2023
5:30 p.m. – 7:30 p.m.
Location: Union Trust, 717 Chestnut Street,
Philadelphia, PA

January Educational Program
(Luncheon Program)

Tuesday, January 23, 2024
11:45 a.m. – 1:45 p.m.
Speakers: Steven K. Mignogna, Esq. & Kelly
M. Preteroti
Topic: "Undue Influence: Will You Know It
When You See it?"
Location: Union League of Philadelphia,
140 S. Broad Street, Philadelphia, PA

February Educational Program
(Luncheon Program)

Tuesday, February 20, 2024
11:45 a.m. – 1:45 p.m.
Speaker: Richard W. Nenno, Young
Conaway Stargatt & Taylor, LLP
Topic: Watch for more information soon!
Location: Union League of Philadelphia,
140 S. Broad Street, Philadelphia, PA

continued on page 3

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Events continued

March Educational Program (Late Afternoon Program, Followed by Reception)

Tuesday, March 19, 2024

3:45 p.m. – 7:00 p.m.

Speaker: Jere Doyle, BNY Mellon Wealth Management

Topic: Watch for more information soon!

Location: Union League of Philadelphia, 140 S. Broad Street, Philadelphia, PA

Annual Meeting, Seminar & Reception

Thursday, May 23, 2024

3:15 p.m. – 7:30 p.m.

Speaker: Samuel A. Donaldson, Georgia State University

Location: Barnes Foundation, 2025 Benjamin Franklin Pkwy, Philadelphia, PA

President's Message continued

virtual only and featured Natalie Choate who spoke on "Death and Taxes: The Inherited Retirement Plan." In January 2024, Steven Mignogna, Esq. and Kelly Preteroti will be presenting on "Undue influence: Will You Know It When You See It?" In February 2024, Richard Nenno, Esq., will be presenting on state income taxation of trusts. In March 2024, Jeremy Doyle of BNY Mellon will speak. At our annual meeting in May 2024, which will be held at the Barnes Foundation, Professor Samuel Donaldson will be speaking on a Federal Tax Update. The speakers and topics of our programs and the annual meeting are determined by our Programs Committee.

Speaking of Committees, I feel the most rewarding way for members to get involved with PEPC is through our many Committees. Committees allow you to meet and interact with other members in other disciplines in our estate planning community on a more informal level to develop closer relationships. Most

Committees meet on a monthly basis and allow to you get to know and interact with other members in this more intimate environment. Committee participation provides the opportunity to expand your professional relationships and allows to you be involved with the direction of PEPC. If you would like to get involved and serve on a Committee, please contact Denise Downing, our PEPC administrator or the Chairs of the Committee. Here are our various Committees:

Diversity Committee – Co-Chairs:

Fareeha Arshad & Leanne Evans

The DEI committee seeks to empower and promote inclusion and belonging within PEPC's leadership, membership and programming. The Committee organizes networking events and promotes discussion around diversity, equality and inclusion within the estate planning community.

Ethics Committee – Co-Chairs: Rick Bell & Glenn Henkel

The Ethics Committee meets to discuss ethical issues surrounding the estate planning profession and hosts an annual seminar on this topic (which is a great opportunity to receive your continuing education ethics credits).

Membership Committee – Co-Chairs: Jacklynn Barrass & Alan Weissberger

The Membership Committee is tasked with growing and sustaining our membership.

NAEPC Engagement Committee – Co-Chairs: Tim Zeigler & Kim V. Heyman

The NAEPC Engagement Committee serves as the liaison between PEPC and the National Association of Estate Planners and Councils. The Committee is responsible for promoting the benefits of NAEPC to local council members, promoting the Accredited Estate Planner® ("AEP") designation, supporting

AEP candidates and encouraging PEPC member participation in NAEPC leadership positions. In regard to NAEPC, I will be attending the annual NAEPC estate planning conference in Fort Lauderdale, Florida in November on behalf of PEPC and look forward to meeting with leaders of planning councils nationwide to learn from each other and share best practices. I hope to see some of you there!

Newsletter Committee – Co-Chairs: Kim V. Heyman & Michael DeFillipo

The Newsletter Committee organizes and supplies content for our newsletter that is published three times a year.

Outreach Committee – Co-Chairs: Lisa Mittelman & Bradley Terebello

The Outreach Committee seeks to promote the importance of estate planning to the greater Philadelphia community through educational events, volunteer opportunities and partnerships with other organizations.

Programs Committee – Co-Chairs: Christopher Borden & Jacklynn Barras

The Programs Committee determines the speakers and topics for our six luncheons and the annual meeting.

Roundtable Committee – Co-Chairs: Bob Hart & Anthony Weiss

The Roundtable Committee organizes informative, smaller brown-bag educational lunch events that are free to members, where local speakers present on a variety of topics.

Social Committee – Co-Chairs: Jillian Kukucka & Jamie Kelly

The Social Committee organizes many of our great networking events, such as our Welcome Back Party, our Holiday Party, and the always popular Golf, Tennis and Yoga Outing. The Social Committee also organizes other events, such as our Drop-Ins, which are held at Philadelphia-area

continued on page 4

President's Message continued

bars and restaurants.

Social Media Committee – Co-Chairs: Shane Johnson & Josh Niles

The Social Media Committee is in charge of providing and maintaining fresh content on our website at www.philaepc.org and also is tasked with handling our social media (Facebook and LinkedIn).

Sponsorship Committee – Co-Chairs: Scott Lillis & Erin McQuiggan

The Sponsorship Committee networks with members and local businesses to match PEPC sponsorship opportunities with firms looking to support and work with the local estate planning community.

We could not put on our programs and events without our sponsors. For the 2023-24 program year we are beyond thankful to our platinum sponsors who are: Freeman's Auction House, Haverford Trust Company, Legacy Advisors, Raymond James Trust and Stradley Ronon Stevens & Young, LLP. If you or your organization are interested in sponsoring an event, please do not hesitate to contact me or the chairs of our Sponsorship Committee.

The lifeline of our Council is maintaining and growing our membership. Please think about colleagues or relationships that you have who may benefit from a membership in PEPC and encourage them to join.

I look forward to a great year. Please do not hesitate to reach out with your thoughts and suggestions on how we may improve your membership experience. We welcome your input.

Sincerely,
Stephanie E. Sanderson-Braem, Esq.

Circuit Split continued

fixing the value of the stock, both courts disregarded them and instead attempted to determine the stock's fair market value. In doing so, the courts diverged on whether an obligation to redeem stock is a legitimate liability that offsets the dollar value of the insurance proceeds.

Before addressing the cases, it is worth reviewing the rules. For a buy-sell agreement to control the Federal Estate Tax value of closely held stock, the agreement must meet several requirements under section 2703 of the Internal Revenue Code of 1986, as amended (the "IRC"). Under IRC §2703(a), the value of property for Federal Estate Tax purposes will be determined without regard to (1) any option, agreement, or other right to acquire or use the property at a price less than the fair market value of the property (without regard to such option, agreement, or right), or (2) any restriction on the right to sell or use such property. However, IRC §2703(a) will not apply to any option, agreement, right, or restriction that meets each of the following requirements under IRC §2703(b): (1) it is a bona fide business arrangement; (2) it is not a device to transfer such property to members of the decedent's family for less than full and adequate consideration; and (3) its terms are comparable to similar arrangements entered into at arm's length.

Treasury Regulation ("Treas. Reg.") §20.2031-2 governs the valuation of stocks and bonds for Federal Estate Tax purposes. Under *Treas. Reg. §20.2031-2(f)(2)*, the value of a closely held company may include life insurance proceeds payable to or for the benefit of the company "to the extent such nonoperating assets have not been taken into account in the determination of net worth, prospective earning power and dividend-earning capacity." As discussed

later, reasonable minds will disagree on the meaning of this language.

Treas. Reg. §20.2031-2(h) addresses the valuation of securities subject to an option or contract to purchase (such as a buy-sell agreement) and should be interpreted "in tandem" with IRC §2703.² The stated price in a buy-sell will control for Federal Estate Tax purposes where (1) the price is determinable from the agreement, (2) the terms of the agreement are binding in life and death, (3) the agreement is legally binding and enforceable, and (3) the agreement was entered into for bona fide business reasons and is not a testamentary substitute intended to pass on the decedent's interests for less than full and adequate consideration.³

In 2005, the Eleventh Circuit decided *Blount v. C.I.R.*⁴ In that matter, Jennings and Blount, the two shareholders of Blount Construction Company ("BCC"), entered into a stock-purchase agreement with BCC that obligated the company to purchase the stock of a shareholder on that shareholder's death at a price agreed upon by the parties or, in the event there was no agreement, for a purchase price based on the book value of the company. BCC purchased \$3 million insurance policies on the lives of the shareholders to finance the buyback. When Jennings died, BCC purchased his shares from his estate based on the company's book value in the previous year. Blount was then in complete control of the company.

Thereafter, Blount and BCC executed an amendment to the stock-purchase agreement that required BCC to purchase Blount's shares from his estate for \$4 million after his death. The amended agreement did not provide for any future adjustments to this price. After Blount died, BCC paid his estate \$4 million for his shares, and Blount's Federal Estate Tax Return reported the value of the shares

Circuit Split continued

at \$4 million. Since Blount was able to unilaterally modify the agreement, the IRS and the Tax Court found it was not binding on him or his estate and should therefore be set aside.⁵ In determining the fair market value of his estate's shares, the Tax Court added the insurance proceeds to BCC's other assets.

The Eleventh Circuit affirmed the Tax Court's decision to disregard the stock-purchase agreement, but reversed the decision to include the life insurance proceeds in the business valuation. The value of the insurance proceeds was, in the Court's opinion, offset by the obligation to pay Blount's estate in the stock buyback. Citing *Treas. Reg. §20.2031-2(f)(2)*, the panel found the phrase "to the extent that such nonoperating assets have not been taken into account" precluded the inclusion of the insurance proceeds in valuation of the company. The life insurance payout was "taken into account" by the company's obligation to purchase Blount's stock and was therefore "offset dollar-for-dollar." Even though the buy-sell agreement was disregarded for valuation purposes, it was still an enforceable liability against the company and could therefore offset the insurance proceeds on the company balance sheet.

Connelly presented a similar fact pattern. Brothers Michael and Thomas Connelly were the sole shareholders of Crown C Corporation ("Crown"), with Michael owning a 77.18% majority stake. Under a stock-purchase agreement, if one brother died, the surviving brother had a right of first refusal to purchase the decedent's shares. If the surviving brother declined, Crown was obligated to redeem the shares. Crown purchased \$3.5 million life insurance policies on both Michael and Thomas.

The Crown stock-purchase agreement provided two mechanisms for valuing the shares. First, the brothers were to execute a "Certificate of Agreed Value" at the end of every tax year, setting the price per share by "mutual agreement." In the absence of mutual agreement, the brothers were directed to obtain two or more appraisals of fair market value. The brothers failed to actually perform either valuation method.

When Michael died, Crown purchased Michael's shares from his estate for \$3 million. That amount arose from a separate agreement between the estate and Michael's son, not from the stock-purchase agreement. No appraisals were obtained to arrive at this figure. On Michael's Federal Estate Tax Return, his executor relied solely on the redemption payment and valued the Crown shares at \$3.0 million.

After an audit, the IRS disregarded the stock-purchase agreement and found the estate had undervalued Michael's shares by only using the \$3.0 million redemption payment and not considering the actual fair market value of the company, which included the life insurance proceeds. The IRS concluded that the company was worth \$6.86 million and Michael's estate's 77.18% stake was therefore worth about \$5.3 million. Michael's estate paid the deficiency and sued for a refund.

The estate argued the company's obligation to buy the shares was an enforceable obligation that offset the life insurance proceeds. The District Court disagreed, holding that a stock redemption agreement is "not an ordinary corporate liability." Therefore, a proper valuation of Crown must treat the insurance proceeds like a company asset with no offsetting liability.

The Eighth Circuit affirmed. First, it found that the stock-purchase agreement had no bearing on the valuation of

Michael's shares because the brothers failed to follow the prescribed methods for determining value (i.e., executing certificates of agreed value by "mutual agreement" or obtaining independent appraisals). The Court disfavored the certificate of value method because it was nothing more than "an agreement to agree." Interestingly, the Court also suggested that following the agreement and obtaining an independent appraisal would have been insufficient because the agreement failed to "fix[] or prescribe[] a formula or measure for determining the price that the appraisers will reach." Even if the valuation mechanisms were valid, Michael and Thomas failed to actually perform them, and Michael's estate reported a stock value based on an unrelated agreement with a beneficiary. Therefore, the Court disregarded the stock-purchase agreement under IRC §2703(a) and undertook to determine fair market value.

Blountly⁶ rejecting the Eleventh Circuit, the Eighth Circuit found that Crown's obligations under the stock-purchase agreement did not offset the life insurance proceeds. The two courts split on their interpretation of *Treas. Reg. §20.2031-2(f)(2)*, which, as stated above, in determining the estate tax value of closely held stock, excludes life insurance proceeds that have already been "taken into account in the determination of net worth." According to *Connelly*, the insurance policy was not "taken into account" because the "redemption of stock is a reduction of surplus, not the satisfaction of a liability." The Eighth Circuit draws a categorical distinction between a corporate liability and an agreement to redeem shares, while the Eleventh Circuit does not.

Connelly offers this illustration: If a willing buyer purchased all the shares of Crown, the buyer could then "extinguish the

continued on page 6

Circuit Split continued

stock-purchase agreement or redeem the shares *from himself*. This is just like moving money from one pocket to another. There is no liability to be considered – the buyer controls the life insurance proceeds.” Whether the buyer chooses to extinguish the agreement or actually redeem the shares, the buyer ends up with a company worth \$6.86 million. Further, the Court noted that a willing seller would not accept \$3.86 million for a company about to receive a \$3 million influx of cash. Therefore, the Court determined that the stock-purchase agreement was not a true liability of the company.

A petition for writ of certiorari in *Connelly* was filed on August 16, 2023. A Supreme Court opinion settling this disagreement would provide clarity to our practice. Whichever way this shakes out, careful consideration of IRC §2703 and the §2031 Treasury Regulations is crucial when drafting a buy-sell agreement of any type.

Key Takeaways:

- If the IRS disregards a buy-sell agreement in a Federal Estate Tax audit, it may attempt to appraise the value of closely held stock. Appellate courts have disagreed about whether life insurance proceeds should be included in that valuation. This uncertainty can be avoided by using a properly drafted buy-sell agreement.
- A buy-sell agreement should be respected for Federal Estate Tax purposes if (1) it is a bona fide business arrangement; (2) it is not a device to transfer such property to members of the decedent’s family for less than full and adequate consideration; and (3) its terms are comparable to similar arrangements entered into at arm’s length. The agreement should have real economic effect other than the

minimization of taxes.

- The valuation mechanism in the contract should be more than just an “agreement to agree” and should instead be tied to an objective measure (e.g., independent appraisals or periodic adjustments based on a formula).
- Ensure that the client and all counterparties are actually following through with the valuation mechanisms stated in the agreement.

Andrew J. Barron is an associate in the Trusts, Estates, & Personal Planning group at Stradley Ronon Stevens & Young, LLP. Andrew represents high-net-worth individuals in all aspects of estate, trust, and tax planning. He also represents fiduciaries in the administration of trusts and estates.

1 70 F.4th 412 (2023).

2 *Connelly*, 70 F.4th at 417.

3 *Estate of True v. C.I.R.*, 390 F.3d 1210, 1218 (10th Cir. 2004).

4 428 F.3d 1338 (11th Cir. 2005).

5 See *Treas. Reg. § 20.2031-2(h)* (“Little weight will be accorded a price contained in an option or contract under which the decedent is free to dispose of the underlying securities at any price he chooses during his lifetime.”)

6 Sorry.



What’s In A Name? The steps transgender individuals need to take to change legal names on accounts and estate planning documents.

Brittany Cook, J.D., LL.M.

Transgender individuals endure numerous challenges on their way to living life as their true, full selves. On top of massive societal, familial, emotional, personal, and medical hurdles, they also face the practical hurdle of changing their legal name across dozens of official documents and accounts. That process, as many discover, involves a lot of work and even some mystery, as it is often unclear what is required and where to begin.

It is imperative that all legal and financial documents use the same, legally recognized name. This includes estate planning and trust documents, which often require multiple steps to update. Errors or inconsistency in these documents can lead to delayed or rejected transactions, possible fees or penalties, and other complications.

With that in mind, here is an overview of the key documents and steps transgender clients should be aware of when changing their name.

Part 1: Updating key state and federal documents

Before a person can update a name anywhere, they must complete a legal name change at the state level. Most states require a court order and charge a fee to change a name. In Pennsylvania, a person must submit a petition to the common pleas court in the county where they reside. Notice of the hearing must be

Name continued

published in two newspapers circulated in the county of residence or the contiguous county. The court may waive the publication requirement and seal records for the applicant's safety. (54 Pa. Cons. Stat. Ann. § 701.)

The rules are nuanced in every state, so it is important to know and follow the specific requirements that apply to the client. The National Center for Transgender Equality provides a helpful breakdown of the requirements in each state. If a state requires a court order, be sure to ask for multiple certified copies of it, as there are many steps in the process that will require one.

Once the client receives the certified copies of the court order, she must submit a copy to the Social Security Administration to receive a new Social Security Card. Just like people who change their names when they get married, transgender individuals must go in person to the Social Security Administration to change their name. They should be aware that the Social Security Administration is not the fastest, so their timeline for processing a name change may overlap with other activities that involve a legal name, like filing taxes. If your client is filing an individual income tax return and has not yet received confirmation of the name change from the Social Security Administration, he should file using his former name. The client should speak with a CPA at the time of filing to make sure this is navigated correctly.

The client must also get a new driver's license, or a state-issued identification. Depending on state rules, this may or may not require an updated Social Security card and/or other documentation, so the client should confirm the requirements before going. In Pennsylvania, a certified copy of the name change is required to

change the name on a driver's license. Additionally, if changing gender on a Pennsylvania license, the client must present a "Request for Gender Change."

Part 2: Updating banking, estate and trust accounts

Once the client has received the legal name change documentation from the state and photo identification, she can move forward with custodian or bank name changes on personal accounts. Typically, a name change form is required along with submission of her new state-issued identification and court order.

Changing a name on estate planning documents can be simple or complex, depending on the nature of the documents. Basic estate planning documents like wills, powers of attorney and health care powers of attorney, are easy to change. The process generally requires an attorney but does not ring up an exorbitant amount of billables.

The process gets more tedious when there is a more complicated estate or trust. While some trusts are revocable, which allow for amendments without any restrictions, they still need to be amended through a legal document drafted by an attorney. Most modern irrevocable trusts include language allowing for administrative amendments. Changing the name of a beneficiary would be considered an administrative change. These amendments may be initiated by a trustee or a trust protector, depending on the bifurcation of roles under the trust agreement. In those situations, a lawyer can draft an amendment changing the legal name of the person and updating any references to the individual's prior name and gender. Additionally, most modern documents allow for pronoun flexibility and allow the document to be read using different pronouns depending on the beneficiary.

If a trust document does not explicitly include mechanisms to make amendments, one must look to the statutes under the state law governing the trust. States like Pennsylvania permit modifications, which would allow the trust to accommodate the name change, using a Non-Judicial Settlement Agreement ("NJSA"). A modification by NJSA requires all beneficiaries and trustees to enter into the agreement. So long as the modification is not inconsistent with a material purpose of the trust, the NJSA can be made without going to court. Changing a name would not be considered inconsistent with a trust's material purpose under the Uniform Trust Act adopted by Pennsylvania. (20. Pa.C.S.A Descendants, Estates and Fiduciaries § 7710.1.) If the other beneficiaries will not sign off on the modification, the beneficiary may have to go to court to modify the document to reflect his or her new name.

There are other methods by which a trust can be changed under various state laws if the trust does not explicitly provide for administrative amendments. Regardless of the language of the document or the trust's governing law, an attorney must be engaged to make these changes. Once the trust is modified, it must be sent to the bank or custodian handling the trust. A custodial form is often required, along with the legal documentation showing the name change of the beneficiary and the trust modification.

At the end of it all, if the name of the trust has changed (because it includes the beneficiary's name), it is imperative that the trustee file a name change for the trust with the IRS. This is done by including IRS Form 56 and the trust modification when submitting the trust's tax return to the IRS. This is important for tax filing purposes - if tax is paid electronically and the name of the trust on the custodian does not match

Name continued

the name on file with the IRS, the IRS will reject the payment.

Changing a name for identification and estate planning purposes is only a fraction of the issues that transgender individuals are facing. Being equipped as an advisor to provide the instructions and insight discussed here, is a small, but valuable service that can ease the complications of completing a name change.

Brittany Horn Cook is a Managing Director, Wealth Planner and Fiduciary Council at Tiedemann Trust Company. Brittany works with UHNW clients and their advisors across the US to develop and administer custom trust, tax, and estate planning solutions. Brittany brings experience with Delaware trust law and related advantages relative to each client's specific short-term and long-term objectives. Brittany earned her JD from the Rutgers University School of Law and LL.M. in

Taxation and Estate Planning Certification from Temple University. Brittany is a board member of the Brodsky Center at the Pennsylvania Academy of Fine Arts.

Lies, Damn Lies and Illustrations

Michael C. DeFillipo, CLU®, ChFC®

The backbone of an insurance proposal is the illustration. On the surface it answers the "What" questions:

"What will it cost?"

"What is the death benefit?"

"What is the cash value?"

"What are the distribution amounts?"

After 30-or-so pages of definitions, disclosures and legalese, the illustration

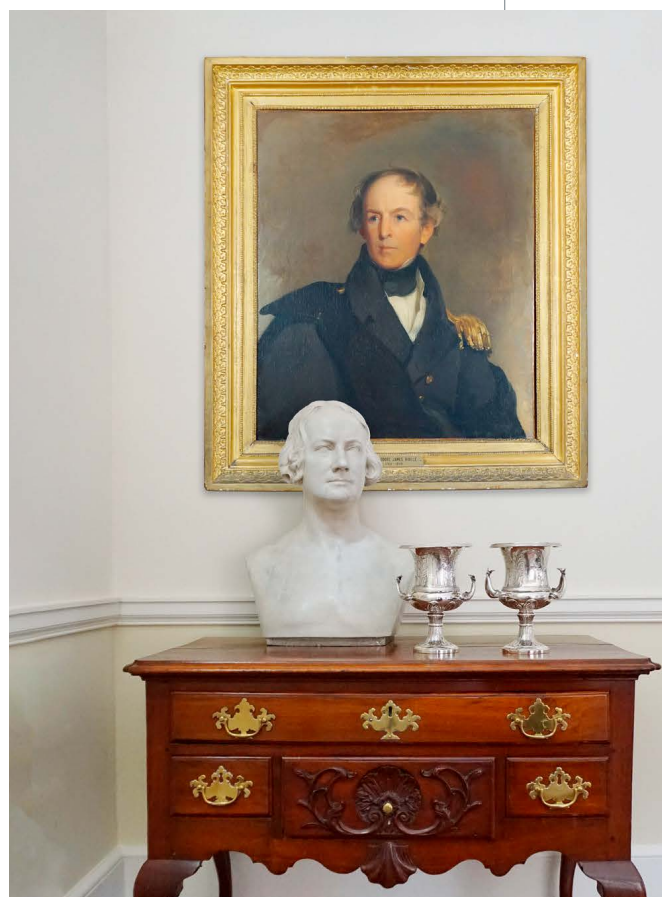
opens up to an array of numbers sorted into various columns for each year going forward. There's multiple assumptions run next to each other, summary pages that try to condense the information into a single slightly-less-confusing table, and pages that are for some reason intentionally left blank.

At its core, an illustration is a mathematical representation of a concept; it is a tool to help make an intangible and unknown future be measured and analyzed based on the provided parameters and assumptions.

Policy Pricing, A (Brief) History

In the past, the process for pricing permanent insurance was fairly simple. The life insurance producer would determine the premium by looking at a book that contained a matrix of amounts

continued on page 9



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"Authenticity and values aren't just what we do, they are who we are."
— Laura Doyle, CEO

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Property from The Christine Biddle Wainwright Collection. Chippendale Carved Walnut Dressing Table, Sold for \$12,600. Portrait of Commodore James Biddle, 1839 by Thomas Sully Sold for \$94,500. Pair of American Silver Two-Handled Vases Sold for \$59,850.

New York Beverly Hills Boston Charleston Chicago Connecticut
New Jersey North Carolina Palm Beach Pennsylvania Washington DC

Lies continued

per unit of death benefit and match it up with insured's age. The only product available was Whole Life, which is built with an underlying guaranteed cost and priced such that the policy would "endow" (the cash value equaling the initial face amount) at product maturity. For non-participating Whole Life, where dividends are not applied, this was a very simple, straight-line calculation.

When we add dividends to the mix, a more detailed ledger is required to show how the policy would perform based on a) no dividends (the guaranteed scenario similar to the non-participating version), and b) the current (or alternative) dividend rate. By assuming dividends are applied, we have the ability to look into the future and determine when those dividends would begin to reduce or eliminate the out-of-pocket payments. But pricing was still based on the fact that a fixed premium was due every year – it could be illustrated to be paid with cash, dividends or policy loans.

Sometime later, the Great Universal Life Revolution occurred. (But the term "whole life" is still used in many situations instead of "permanent insurance".) After that insurance products were not based solely on a contractual premium but were placed on a flexible chassis. Each month, an insurance charge is deducted from the cash value – so as long as there is sufficient cash value to cover the expense, the policy persists. Those charges are not set at the contractual maximum, but instead the insurers have a current rate that is lower than what is filed with the Insurance Commissioner's office. This means we have an unknown.

With no dividends, the cash value of the policy has to grow by some other means. The dividend's cousin, a declared interest rate set by the company, was applied to

projections – as with charges, it was not the contractual minimum, but an amount the insurance company felt comfortable with given the yield on their investments. Next came Variable Universal Life, where the cash risk shifted to the policy owner – the mechanism for how the cash would grow is dependent upon the performance of underlying mutual fund analogues. And then came Indexed Universal Life, where cash value was credited interest based upon the performance of a widely held index over a stated period of time. Now it was up to the advisor and the consumer to determine the future performance of equity markets for the next 40-50 years and apply that to the pricing of their insurance policy.

This is an overly simplistic summary, but it is meant to illustrate the point that as more variables and flexibility come into play, the less an illustration actually reflects what will happen.

What an Illustration Tells Us

Based on this specific, selected, hypothetical, non-guaranteed, prospective rate of return and current, non-guaranteed cost of insurance charges, this will happen. Any change to these assumptions may impact policy performance.

Putting aside Guaranteed Universal Life, what history (and common sense) has told us is that the future is not a static experience. **All the numbers on an illustration are most likely NOT going to be exactly what happens.** Interest crediting rates have decreased significantly and continuously over the last two decades – that may turn around in the next few decades.

For Variable and Indexed Universal Life, not only do we not know how equity markets will perform, we are assuming a straight-line rate of return on our already admitted best guess of an average return; in situations where varying rates of

return seem to make the illustration more realistic, we have just swapped out a linear unknown for a sequence of unknown events ... in an unknown order.

This does not mean illustrations are deceptive or misleading. When positioned appropriately, the illustration helps to understand the "How" questions:

"How does my policy work?"

"How do better or worse assumptions of crediting rates / performance impact the policy?"

"How much risk is there in the insurer changing the underlying pricing"

The Takeaways

Knowing with a high degree of confidence that the illustration is not an exact match to what will happen in the future, here are some key thinking points when analyzing an illustration:

- It is all about the inputs. The output of an illustration is entirely dependent upon the selected variables. Are there assumptions of changes in crediting rates or equity returns built into future years? Is there a change in how the death benefit is structured (e.g., changing from a level death benefit to an increasing option)? What kind of flexibility is there to increase, decrease or skip scheduled premiums? If no underwriting has been done, what does a change in risk class do to the underlying insurance costs?
- If the policy is designed to have the cash value support the monthly cost of insurance charges (so anything not dependent upon a contractual guarantee, e.g., Guaranteed Universal Life), what cash value "goal" was used to determine the premium outlay? In many situations, the premium is solved for using a calculation to have \$X cash value at Y year.
- If the policy is designed to have no cash value and lapse at Age 100, this means

continued on page 10

Lies continued

any decrease in crediting rate or increase in charges may put the policy in danger of lapsing prior to life expectancy. On the other hand, if the premium is funded such that there is more robust cash value at maturity or life expectancy, the plan has built in a cushion to account for potential negative future events.

- Stress testing is good, but do not stress about it. Looking at how various rates of return around the benchmark assumption (for example 2% +/- the baseline rate of return in a Variable Universal Life policy) can demonstrate what additional funding may be necessary to support the death benefit and/or the potential for an early policy lapse. However, if the stress testing comes down to the level of illustrating a very low rate of return on a Variable Universal Life policy, that may be a good indication that other products with less equity risk should be evaluated.
- Understand what the intent of the "Guaranteed Assumptions" are within the design. With pricing pressure on Guaranteed Universal Life leading to several providers eliminating the product and many others increasing pricing on pure stand-alone Guaranteed Universal Life policies, there has been an increase in the use of limited secondary guarantees on non-guaranteed chassis. In other words, a policy can be designed to have a death benefit guarantee (not subject to return or insurance charge risk) to a certain point, such as expected mortality, while also having a non-guaranteed target of cash value performance.
- Similar to the comments around stress testing, if the strategy is constructed based on non-guaranteed assumptions – such as in situations where the policy is being overfunded for cash

accumulation purposes – the concept is dependent upon achieving some level of return based on accepting more risk. If the consumer is not confident that the highly rated insurance company is not going to increase the charges to the contractual maximum minutes after they purchase the policy, and at the same time, that equity performance or interest rates are going to fall to historically low levels and persist there forever, then perhaps re-design is in order.

The life insurance illustration is the best tool we have available to demonstrate how the life insurance strategy is supposed to work. By understanding its components and their interaction with each other, the advisor and consumer can evaluate whether the proposed solution fits with the intended goal given the expectations of risk and return.

The decision to implement a strategy should not be based on "the numbers" from the illustration. The discussion around the illustration should be to reinforce and validate the concept that is being presented, making sure the solution is the appropriate approach for solving the problem.

Michael C. DeFillipo, CLU, ChFC, is a Partner of 1847 Private Client Group, in Conshohocken, PA. Michael has nearly 20 years of experience working with high net worth and ultra-high net worth clients and their advisors designing, implementing and monitoring sophisticated life insurance portfolios. 1847 Private Client Group is an owner firm of Lion Street – an exclusive national network of elite financial firms.

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Artificial Intelligence ("AI") in Estate Planning – Challenges and Opportunities

Victor S. Levy and Eric DeSouza

In 1970, ex-Beatle, George Harrison, penned one of his most famous songs called "What is Life?" The chorus is quite simple – "Tell me, what is my life without your love? Tell me, who am I without you, by my side?" The chorus poses two answers to the question – what is life? It implies that human life has two primary meanings – 1) to give and receive love, and 2) to be together, "side by side" with other humans.

This feeling of being together with our clients, helping them plan and prepare for the future when they pass away and leave behind resources for their loved ones, is essential to being an effective estate planner. The work is emotional and helping our clients starts with what the late Steven Leimberg, a nationally recognized expert in estate planning, called "The Estate Planning Interview," which he indicated begins at the start of a new client relationship with words like this – *"Someday, you and I might have to talk about death – not as an abstract or a 'maybe someday thing' but as a very real event which will happen very soon to you or a member of your family. I'm bringing it up now – so that – if and when that time comes – I'll have your permission to speak freely, and with candor."*

We live in a time of rapidly changing

technology, where computer technology is now evolving to become more humanlike. With recent developments in Artificial Intelligence ("AI"), questions about any subject can be posed to computers that process the answers based upon sophisticated algorithms designed to replicate a human experience. The most popular, Chat GPT, on its website asks users to "Start a Conversation," to which upon clicking the Chatbot says, "Hello, how can I assist you?" The makers of ChatGPT provide some insight into their tool on their website – "We've trained a model called ChatGPT which interacts in a conversational way. The dialogue format makes it possible for ChatGPT to answer follow up questions, admit its mistakes, challenge incorrect premises, and reject

continued on page 12

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AI continued

inappropriate requests.”ⁱⁱⁱ

ChatGPT promises to perform the work, or at least get to the answers, which has historically been the domain of humans. This new technology is opening new avenues for opportunity, but it also has the potential to replace human experience in many industries. Query - can AI replace the human-to-human estate planning experience?

AI Defined

The words “artificial intelligence,” or AI as it is commonly known, conjures up images of science fiction. A movie like the 1968 Stanley Kubrick classic, “2001: A Space Odyssey” comes to mind, which introduced HAL, a Heuristically Programmed Algorithmic Computer, a sentient artificial general intelligence computer that controls the systems of the Discovery One spacecraft and interacts with the ship’s astronaut crew.

iii Or, perhaps AI is reminiscent of the 1977 groundbreaking film “Star Wars,” where the character C3PO, the “protocol droid” and trustworthy sidekick to R2D2, bobbled around on screen and was intended to assist in etiquette, customs and translation, boasting that he is “fluent in over six million forms of communication.”^{iv}

In general, AI refers to the development of computers or machines that can perform tasks that are usually designated to humans, which require some sort of human intelligence.^v It is created using algorithms and models that enable these machines to learn from data while adapting and recognizing problems, allowing them to solve problems in a way that simulates human cognitive ability. “General AI” is what most people think of when they are talking about modern AI, because it aims to mimic human

intelligence and perform a wide range of tasks.^{vi}

AI’s current capabilities stem from its ability to process vast amounts of data quickly using deep learning, neural networks and techniques like natural language processing, computer vision and reinforcement learning. This technology has the capability to increase productivity and improve the human decision-making process, but how does it do with estate planning questions?

Sample AI Queries

To test its capabilities, we posed two questions to ChatGPT - one a simple estate planning fact pattern and the other a general life insurance scenario. Here is a portion of the output that was created by the AI algorithm of ChatGPT:

Situation #1: Mary and John, ages 57 and 56 respectively, have three children ages 20, 22 and 24. Their youngest child has a disability and will likely need a lifetime of financial support. They have \$300,000 in non-qualified portfolio assets, own a \$1,000,000 home jointly in Pennsylvania, and have a total of \$1,000,000 of pre-tax resources in 401(k) plans. They have no life insurance and no wills. They are not sure what to do with their estate plan.

ChatGPT Response: Mary and John’s situation is complex, and they should consult with an estate planner and an attorney to create a comprehensive estate plan. Here are some considerations and steps they should take:

1. Meet with an Estate Planner and Attorney: The first step is to consult with an experienced estate planner and attorney who can help them navigate the legal and financial aspects of estate planning.
2. Create a Will: Mary and John should each create a will to outline their wishes regarding the distribution of their assets. They can specify how they want

their assets distributed among their children and how they want to provide for their youngest child’s lifetime support.

3. Consider a Special Needs Trust: Since their youngest child may need lifetime support, it is crucial to establish a Special Needs Trust (SNT).

Author’s Observation: AI saw that the situation was complicated and that the need would best be solved by meeting in person with an estate planner, to have a human-to-human experience. To its credit, AI seems to know its limitations. However, the response, of which we only showed three of the 11 ideas that ChatGPT prepared, would be salutary to an estate planning professional to provide the ideas to help formulate the conversation the estate planner would have with the clients.

Situation #2: What is the proper amount and type of life insurance I should buy if I am a 28-year-old diabetic smoker with four kids and I make \$120,000 per year?

ChatGPT Response: Determining the proper amount and type of life insurance can depend on various factors, including your financial situation, your goals, and your family’s needs. However, there are some general guidelines that can help you make an informed decision.

Amount of Coverage (Death Benefit): Income Replacement: A common rule of thumb is to have life insurance coverage that is five to 10 times your annual income. In your case, that would be between \$600,000 and \$1,200,000. Since you have four children, leaning toward the higher end of this range might be more appropriate.

Type of Life Insurance: Term Life Insurance: This type of insurance provides coverage for a specific term, such as 10, 20, or 30 years. It is often more affordable

continued on page 13

AI *continued*

than permanent life insurance and can provide the necessary coverage during your family's most financially vulnerable years.

"Given your age, income, and family size, a combination of term and whole life insurance might be a good option. You could purchase a larger term policy to cover immediate needs and a smaller whole life policy for lifelong coverage and potential cash value growth. However, being a diabetic smoker can impact your insurability and premium rates. It is advisable to work with an insurance agent or financial advisor who can assess your specific situation and help you find the best coverage at a price you can afford."

Author's Observation: The answer from ChatGPT here is enhanced as we provided financial data. The application excels at looking at things in a mathematical way, and to its credit, the program realizes that working with an advisor is ideal. It is notable that ChatGPT did assist with providing a potential path toward implementation by suggesting a dual policy approach, demonstrating a form of cognitive reasoning.

AI Replacing Humans – Economic and Ethical Challenges

Though AI offers opportunities for development and automation, this does not come without drawbacks. AI's rapid development has raised many concerns, both economically and ethically. The primary economic concern pertaining to AI is the job displacement it could cause. ^{vii} Machines replacing human beings who perform jobs to earn income raises many political and societal questions.

Mass automation in every field and across all industries is the ambitious goal that has been acknowledged by AI developers. ^{viii} In fact, the AI movement is a "no-code"

movement, which opens up normally complex code writing to the masses, which should expedite the development of the technology.^{ix} At this early stage, AI does not have the instant capability to perform various roles at a high level, however, this could change over time.

There are also ethical dilemmas surrounding AI. Due to its nature, AI must be trained by a human in some way, and a human is bound to have a degree of bias.^x If AI were to receive this bias it could further amplify social biases, especially if it is trained with pre-selected data. Moreover, AI's decision-making process is incredibly difficult to comprehend, leading to a lack of accountability, not just for the AI itself but for its creators. Consequently, there has been increased legislative focus on AI development and use.^{xi}

Lastly, there are concerns relating to AI around the reliability of its output. Recently, a lawyer used ChatGPT to research a brief for a case, and the ChatBot responded with six case citations that the lawyer proceeded to use in his court filing.^{xii} What the lawyer did not realize is that ChatGPT fabricated the cases it was referencing. One of the biggest concerns of AI is the reliability of the data. This phenomenon is sometimes referred to as AI hallucination.^{xiii}

Benefits of AI to Estate Planners

Despite the ethical and societal concerns, AI functionally excels in data analysis. Humans generally use limited data available to them to guide the decision-making process, however, AI remedies this issue in a meaningful way as it has the capability to use over 99% of all available data to guide decisions in the most accurate possible manner.^{xiv} In addition, AI is faster than any human in finding and organizing data, making it invaluable in the realm of data analytics. With a constant inflow of new data points,

it is easy to become overwhelmed and draw false conclusions. AI can logically sift through all this data and offer input for planners to interpret and apply. In estate planning, this functionality will be potentially useful in analyzing complex planning that relies upon case law, revenue rulings, IRC regulations and the like.

Furthermore, AI can offer 24/7 client communication, answering questions and addressing concerns, whereas human estate planners must rest and eat. Another benefit of AI is its ability to summarize client meetings, eliminating the need for handwritten or typed notes.^{xv} With meeting data alone, AI can compose comprehensive email summaries for clients, containing the most relevant information from the meeting. Over time, AI will likely learn from the different

continued on page 14

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AI *continued*

meeting experiences, further improving the output, as it learns the estate planner's style and thought process.

Emotions and Estate Planning

Estate planning is both logical and emotional; each aspect is of equal importance. Something that is both an upside and downside of AI in estate planning is that it does not feel human emotion. Due to this absence of emotion, AI can think far more rationally than any human could by nature. No decision AI would make is based on emotion, meaning it will produce consistent and accurate results based on real data. A downside of this lack of emotion is that there cannot be any human connection with AI, and this could lead to a void

between the client and the advisor.

A way to address this is for the advisor to take the solution offered by AI, assess the options and then bring the relevant decisions to the client. This allows AI to cover the more technical, data-oriented work, while human advisors cover the emotional and "human" aspect of the work. This is how AI and human estate planners can work together.

Currently, it is not feasible for AI to replicate the human relationship between client and advisor as AI is unable to have an in-person meeting with a client, nor can it laugh or cry with a client. Because of this, it is generally accepted that people prefer to have a human advisor guiding them. According to a survey conducted by the Million Dollar Round Table, 88% of people believe that the human-to-human financial advisor relationship is extremely

important.^{xvi} However, AI continues to evolve and self-teach, and some speculate that at some point soon it may develop the ability to simulate emotion.^{xvii}

Query to ChaptGPT: Will AI replace the human estate planner?

ChatGPT: "In summary, AI tools like ChatGPT can be valuable aids in the estate planning process, providing information and generating basic documents. However, they are unlikely to replace human estate planners, who offer legal expertise, emotional support, customization, and a deeper understanding of individual client needs. Estate planners may use AI as a tool to enhance their services, but the human element remains crucial in this field."

It is remarkable how quickly this new

continued on page 15

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AI continued

technology offers the potential to change our profession. At this time, we as planners can rely upon AI as a support tool in assisting us to help our clients with estate planning. The long-term implications of AI and the utility of the technology are yet to be fully realized. Though there are ethical and moral barriers, in a capitalistic economy the least expensive solution will usually find its way to the top. This may be how AI will find its place in the emotional, logical and human world of estate planning.

As George Harrison reflected in his song, "What is Life," it is about love and togetherness. The answer to the same question when posed to ChatGPT is more logical... "Life" is biological, chemical, philosophical, etc. Steve Leimberg said there is a way to start a conversation about an estate plan by saying, "Someday, you and I may have to talk about death." For this simple reason, because we need to ask difficult, emotional questions, estate planners of the human variety still matter, at least for now.

Victor Levy is President of Levy Wealth Management Group, an independent financial planning and estate planning firm in Philadelphia. To read more about Victor, please visit www.levywealth.com

Eric DeSouza was a summer associate at Levy Wealth Management Group this past summer. Eric is a sophomore at the University of Pittsburgh where he is majoring in finance.

i <https://www.naepc.org/events/newsletter/5/2020>

ii <https://openai.com/blog/chatgpt>

iii https://en.wikipedia.org/wiki/HAL_9000#

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vi <https://howtolearnmachinelearning.com/articles/narrow-ai-vs-general-ai>

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viii <https://www.mckinsey.com/featured-insights/future-of-work/ai-automation-and-the-future-of-work-ten-things-to-solve-for>

ix See <https://www.nytimes.com/2022/03/15/technology/ai-no-code.html>
 x <https://www.technologyreview.com/2023/08/07/1077324/ai-language-models-are-rife-with-political-biases/>
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 xvi <https://www.thinkadvisor.com/2019/02/21/investors-dont-want-to-replace-you-with-a-robot-mdr-t-survey/>
 xvii For more information about the future of Emotion AI see <https://mitsloan.mit.edu/ideas-made-to-matter/emotion-ai-explained>.

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From the NAEPC Engagement Committee

As you may have heard from Bronwyn Martin, a member of the board of directors of the National Association of Estate Planners & Councils ("NAEPC"), at the PEPC Welcome Back Event, PEPC is a member of NAEPC. As a member of PEPC, you are as well!

NAEPC serves estate planning councils with goals of excellence in estate planning, education and collaboration. In addition to providing great networking opportunities, among your benefits as a member are access to:

- The NAEPC Journal of Estate & Tax Planning, which provides regular updates on important information regarding the world of estate and tax planning
- Professional Designations like the Accredited Estate Planner® ("AEP®")
- The Robert G. Alexander Webinar Series providing estate planners with high quality, multi-disciplinary and supplemental education
- An outstanding Annual Conference with national speakers

Talking of which, the 60th Annual NAEPC Advanced Estate Planning Strategies Conference & Council Leadership Conference is happening this week in-person at the Fort Lauderdale Marriott Beach Resort & Spa, and includes virtual options as well. To review the complete conference schedule go to naepc.org/conference.

The Conference includes nationally renowned speakers such as Sam Donaldson and Stacy Eastland.

continued on page 16

NAEPC continued

Presentations include:

- Capitalizing on Estate Planning
- Opportunities for High Net Worth Clients in Today's Environment
- TCJA: Critical Income Tax Planning Concepts for Sunset
- Love, Sex, Money, Marriage & Death: Estate Planning Aspects of Divorce
- Wealth Planning for Americans Abroad: Specific Considerations

We will be holding another virtual education program, "AEP® Explained" early next year to answer all your questions regarding the AEP® designation.

If you are interested in serving on our NAEPC Engagement Committee or want to know more about NAEPC or our committee, please reach out to one of us.

Tim Zeigler and Kim V. Heyman, NAEPC Engagement Committee Chair



Event Spotlights:

26th Annual Golf, Tennis & Yoga Outing

The PEPC had another sold out event for our 26th Annual Golf, Tennis & Yoga Outing on July 24, 2023. Over 100 golfers participated in the golf outing at Whitemarsh Valley Country Club. Our tennis outing had record attendance at Green Valley Country Club. All participants came together for a reception and dinner buffet immediately following the outing.

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continued on page 17

Event Spotlights: continued



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continued on page 18



Event Spotlights: continued

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Pickleball Outing & Drop-In Happy Hour

The PEPC held our first Pickleball Outing on August 16, 2023 at the Germantown Cricket Club. Immediately following the outing, we held a happy hour open to all members. Thank you to Glenmede for sponsoring our inaugural event!

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