

# MICHAEL C. DURNEY

LAW OFFICES

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## MEMORANDUM

**DATE:** November 19, 2004  
**TO:** Clients  
**FROM:** M.C. Durney  
**RE:** IRS Update

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On November 4, 2004, the government initiated an unprecedented receivership proceeding against DBIC, the xélan Foundation, the xélan companies in bankruptcy reorganization proceedings, and various other parties. All of the records of the xélan entities in San Diego were seized. A temporary restraining order appointing a receiver was obtained from the court, based solely upon allegations by the government. The affected parties were not given notice, or an opportunity to respond.

Until relief is obtained from the court, DBIC management cannot continue to pay its normal business expenses, nor process and make payment of disability claims and experience adjusted refund requests, as it has to date. Likewise, the Foundation cannot honor its commitments, including considering advice from donors regarding requested contributions. The receiver is being advised immediately that the interests of those insured through DBIC need to be protected (especially those on claim status) until the court holds a hearing on the matter.

You should know that lawyers for DBIC, the Foundation, lawyers representing the other affected parties, and I on behalf of the doctor/clients I represent, are working around the clock preparing a response to each and every material allegation made by the government. I filed yesterday a Motion to Intervene on behalf of nine individuals who are either on disability, who need to make annual premium payments on their disability insurance to keep it in force, or who are owed annuity payments by the xélan Foundation. All nine of these xélan members have had these rights blocked by the government's action. Opposition to the government's action will be filed today by all the other lawyers. A hearing on this freeze will be held on December 3, 2004.

We firmly believe that there is no legitimate basis for the receivership. In my 36 years of practice (including six years in the Tax Division of the Justice Department), I have never seen the government request the extraordinary relief of having assets sequestered months or years before a determination of whether any taxes are even due. While the outcome of litigation can never be assured, we are all optimistic that we can disprove the government's case.

Specifically, we believe the evidence will show that the reserves of DBIC which enable it to honor claims and experience adjusted refunds are invested securely and were being managed responsibly. Likewise, we believe the assets of the Foundation will be accurately accounted for, and will be shown to have been securely invested.

We believe that the evidence that will be presented at the hearing will demonstrate that there is no ongoing scam or abusive tax shelter program as the government asserted in its secret filings with the court, and its press release when the court documents were unsealed.

As you know, I represent the good people who are the insureds covered by DBIC and/or participate in the xélan Foundation. I do not represent those organizations.