

Trust and Estate Controversy Group Representative Cases

Illustrative Current Cases

Breach of Fiduciary Duty

Represent 3 of 4 beneficiaries in a lawsuit involving a \$200,000,000 trust where the beneficiaries are seeking surcharge and challenging the trustee fees and legal fees of the trustee who was a partner at one of the largest law firms in Chicago.

Represent beneficiary in lawsuit against former trustee/investment advisor of multi-million dollar trust for breach of fiduciary duty for failing to invest properly under the prudent investor rule, self dealing and conflict of interest.

Represent beneficiary seeking in excess of \$5,000,000 in damages for undue influence from family members who converted various assets of family matriarch in a prolonged scheme (set for three week jury trial).

Represent defendant in a citation lawsuit where siblings are seeking to recover what they allege to be in excess of \$15,000,000 worth of real estate partnership interests alleging conversion and undue influence.

Represent beneficiary in lawsuit against executor of a multi-million dollar estate for breach of fiduciary duty for failure to liquidate estate assets in violation of the prudent person standard of care.

Represent beneficiary in breach of fiduciary duty and conflict of interest matter against trustee of \$40,000,000 trust who also is a beneficiary and is running business entities owned by the trusts.

Reformation and Trust Construction

Represent co-trustees of \$35,000,000 trust in reformation action required to allow current beneficiaries of the trust to obtain distributions, including dealing with GST issues and guardians ad litem.

In a case of first impression, established that a clause requiring a beneficiary of a trust be married within a certain religion was void as against public policy. Case was affirmed on appeal with the Illinois Appellate Court. (Currently pending before the Illinois Supreme Court.).

Represent one group of beneficiaries in multi-million dollar trust dispute over meaning of the term "issue."

Heirship and Beneficial Interests

Represent former spouse in determining rights of her minor children in trusts controlled by their father in multi-billion dollar family.

Represent defendant heir search company in 41 count complaint including RICO and fraud counts seeking \$15,000,000 plus in damages.

Charitable Interests and Foundations

Represent family seeking to enforce multi-million dollar charitable endowment being misused by major Chicago philanthropic organization; cooperate with Charitable Trust Division of the Illinois Attorney General's office.

Represent charity in lawsuit against estate to recover funds where executor converted millions of dollars in estate funds and wrongly distributed the only remaining funds to his family members.

Illustrative Recent Cases

Breach of Fiduciary Duty-Defendant

Represented bank fiduciary in defending multi-million dollar surcharge and breach of fiduciary duty action related to investment performance at time of 2001 market crash. Estate beneficiaries had consented to the co-executors holding the stock, but not in writing, allowing the case to proceed to trial. Able to obtain dismissal of several plaintiffs and causes of action prior to hearing to narrow the issues and potential liability. Mediated case resulting in settlement equivalent to attorney fees.

Successfully defended major national law firm from attack on its fees and effort by beneficiaries to bring malpractice action. That firm had represented individual defendant who lost tortious interference claim (and also was the executor), and the Plaintiff then turned on his law firm, alleging conflict of interest and conspiracy. Our strategy included dismissing efforts to bring malpractice actions and working cooperatively with the successor administrator to settle the fee claim for a refund of less than 10% of the fees paid.

Breach of Fiduciary Duty-Plaintiff

Client was beneficiary of Trust \$30,000,000 Trust. Family lawyer/Trustee from one of the largest law firms in Chicago had charged excessive fees and engaged in inter-family transactions to the detriment of client and her trust. Upon presenting copy of the draft complaint, lawyer/trustee agreed to resign and cooperate with replacement.

Represented a group of heirs in pursuing a claim against the administrator of the estate who used a supposed power of attorney to "sell" over \$3,000,000 of the decedent's real estate holdings in Mexico to her sister right before the decedent's death. After six day trial, obtained judgment that power of attorney was a forgery, thereby voiding all transactions with the power of attorney and allowing the property in Mexico to be seized. Novel strategy allowed trial to be completed within 75 days of filing action.

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Heirship and Beneficiary Rights

In estate where decedent's nephews were the only two declared heirs, our client claimed to be the only child and heir of the decedent. After two other law firms gave up on the case, we pursued two-pronged attack to establish heirship, including the novel application of the doctrine of equitable adoption and the use of DNA to establish heirship. The decedent had been cremated, and we were hired more than a year after the date of death. Through extensive legwork, we were able to find and preserve a tissue sample from a hospital where the decedent had been treated, and then establish through DNA testing that our client was the decedent's only heir. Won case on summary judgment and established client as sole heir.

Obtained court order to obtain blood sample from medical examiner to establish paternity of decedent through DNA testing; established that child who was born after the death of decedent to a woman who was not spouse of the decedent was in fact also the child of the decedent.

Represented destitute client in argument that she was current beneficiary of her parents trusts with novel argument that she was an adult dependent due to their financial support of her as an adult. Obtained substantial ongoing distributions to allow for her support though the deaths of her parents.

Represented a disinherited daughter who also had a POA with limited gift giving power. Proposed a bold gift giving program, allowing daughter and her family to receive in excess of \$1,000,000. Ultimate takers of estate acceded to plan while disabled father was alive.

Will Contest and Trust Contest

Represented the Executor and Trustee and primary beneficiary in defending her mother's will against a challenge by her siblings. Complaint sought more than \$1,000,000; settled with a nuisance payment to the Plaintiffs of \$5,000.

In an undue influence and lack of capacity trust contest, we represented the bank trustee in obtaining (despite there being almost no case law) a court order finding that our client had not duty to defend four trust amendments, but could continue to act as trustee of the original trust.

We have defended, prosecuted and been involved in mediating numerous other will contests, trust contests.

Guardianship

In a case of first impression, Illinois Appellate Court affirmed trial court order we obtained to transfer citation and accounting proceedings from the guardianship court to the decedent's estate after the death of the ward. Handled both trial and appeal work.

Over objections of wife, successfully obtained limited guardianship of respondent in divorce action to allow his brother to represent his interests in divorce. Allowed the guardian to negotiate from a strong position of leverage and obtain a very favorable result in negotiations.

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Represent on an ongoing basis numerous corporate and individual guardians including two \$30,000,000 guardianships; our representation includes the first meaningful estate planning done for minor guardianships in Illinois and sophisticated estate planning in adult guardianship.

Trustee Removal and Accounting

Client's brother was trustee of trust her benefit. He refused to make provide meaningful account for his activities. Upon filing of complaint, learned that brother's business had borrowed money from trust. Won case on Motion for Judgment on the Pleadings (thus avoiding cost and time of discovery and trial), resulting in brother being removed, forced to account and pay damages for actions as trustee.

Client's brother was trustee of trust for client and executor of estate. On filing of Motion for Judgment on the Pleadings, trustee/executor resigned and client was placed in control of estate.

Client was beneficiary of \$5,000,000 Trust created from the proceeds of a personal injury lawsuit. The problem was that the money should have been his, and instead had been placed in trust by his family for its own benefit (as well as his). Filed lawsuit against lawyer and investment advisor trustees as well as for reformation of the trust. Trustees immediately resigned in favor of a corporate trustee, and trust was reformed to remove other beneficiaries.

Client's sister was trustee of trust for client. Trustee refused to properly account for her activities. After filing Motion for Summary Judgment, moved case to mediation and obtained favorable settlement.

Client's sister was trustee of trust for herself and client. Trustee had kept existence of trust a secret and invested trust in properties that trustee used as her own. Filed complaint and then negotiated a settlement forcing sale of all properties and placing client's trust in her own control.

Represented co-trustee in action to remove his co-trustee, who was a remainder beneficiary, son of the grantor and step-son of the primary beneficiary. Action was based on threats and abuse by the co-trustee. Settled the case by proposing a tax-advantaged division of the trust based on actuarial values.

Represented lawyer trustee in his agreement to resign as trustee of series of trusts for difficult family. In very lengthy process, obtained full releases at no cost to client, all fees being paid from trust.

For more information, contact James R. Carey, Chair of the firm's Trust and Estate Controversy Group at 312.332.6300.