Review of Trust and Estate Cases of Interest
From Outside Massachusetts

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For Presentation to Boston Bar Association,
Fiduciary Litigation Committee, December 20, 2011

I. Arbitration

Two cases were decided in 2011 on the issue of whether a provision contained in a trust agreement requiring arbitration of trust disputes is binding on beneficiaries. Both cases decided the question in the negative.

Diaz v. Bukey, 125 Cal. Rptr. 3d 610 (2011), was decided by the Court of Appeal of California, Second District. Daniel and Marie Diaz established a family trust and, after their deaths, one of their daughters, Marie, became trustee. Another beneficiary daughter, Paulette, became dissatisfied with her sister's administration of the trust and brought an action to remove Marie as trustee, appoint a successor trustee and compel Marie to reimburse the trust due to her breach of fiduciary duties. Marie defended the action by pointing to an arbitration provision contained in the trust, which provided for all disputes between the trustee and any beneficiary to be settled by arbitration. The trial court denied Marie's petition to compel arbitration and Paulette appealed.

On appeal, Paulette argued that the arbitration provision was binding on Marie as a beneficiary of the trust under a third party beneficiary or equitable estoppel theory. The Appeals Court began its analysis by noting that the California Arbitration Act requires the existence of a contract. Only parties to an arbitration contract may enforce it or be required to arbitrate. Under

basic contract law, if there is no evidence establishing a "manifestation of assent to the same thing by both parties, then there is no mutual consent to contract, and no contract formation." Id. at 613 (internal citations omitted). Since there was no evidence that the beneficiaries to the trust gave their assent to the arbitration provision, the petition to arbitrate failed on a straight-forward contract theory.

Paulette, however, contended that her sister was a third party beneficiary of the trust, and cited cases where a third party beneficiary to a contract could be held bound by an arbitration provision in the contract. However, none of the cited California cases involved a trust agreement. The Appeals Court noted that older California case law held that a will contest could not be submitted to arbitration because the matter of a probate of a will is a proceeding in *rem* binding on the whole world; by analogy, given that the California Probate Court instructs state courts to apply the same general rules of interpretation to wills and trusts, the same holding would apply to a dispute over a trust. The Court next cited a 1992 California Appeals Court precedent for the proposition that the state probate code vests the Probate Court with exclusive jurisdiction for determining the specific remedies and procedures for protecting trust beneficiaries.

In addition to the reasons cited above, the Appeals Court addressed the central part of its analysis. Relying on a case from Arizona, Schoneberger v. Oelze, 208 Ariz. 591, 96 P.3d 1078 (2004), the Court found that the trustee could not compel arbitration because the arbitration statute requires a contract and, as a matter of law, trusts are not contacts. The Court quoted the Arizona decision at length:

> "[A] beneficiary of a trust receives a beneficial interest in trust property while the beneficiary of a contract gains a personal claim against the promissor. Moreover, a fiduciary relationship exists between a trustee and a trust beneficiary while no such relationship generally exists between the parties to a contract….

> "The legal distinctions between a trust and a contract are at the heart of why [the beneficiaries] cannot be required to arbitrate their claims against the defendants. Arbitration rests on an exchange of promises. Parties to a contract may decide to exchange promises to substitute an arbitral for a judicial forum. Their agreement to do so may end up binding (or benefitting) nonsignatories. In contrast, a trust does not rest on an exchange of promises. A trust merely requires a trustor to transfer a beneficial interest in property to a trustee who, under the trust instrument, relevant statues and common law, holds that interest for the beneficiary. The 'undertaking' between trustor and trustee 'does not stem from the premise of mutual assent to an exchange of promises' and 'is not properly characterized as contractual.'

In Rachal v. Reitz, 347 S.W. 3d 305 (2011), the Court of Appeals of Texas (en banc) also upheld the denial of a motion to compel arbitration of a trust dispute. Hal Rachal was A.F. Reitz's estate planning lawyer and, later, successor trustee of Mr. Reitz's trust. Mr. Reitz's son John became unhappy with Rachal's administration of the trust and filed suit, accusing Rachal of failure to account and looting of the trust property for personal gain. Rachal moved the trial court for an order compelling arbitration based on the following trust provision:

> *Arbitration.* Despite anything herein to the contrary, I intend that as to any dispute of any kind involving this Trust or any of the parties or persons concerned herewith (e.g. beneficiaries, Trustees), arbitration as provided herein shall be the sole and exclusive remedy...

The trial judge denied the motion and the trustee appealed.

The Texas Appeals Court, Dallas (sitting in an en banc session of thirteen justices) upheld the trial court order, finding that Rachal had failed to prove the existence of a valid agreement to arbitrate between the trustee Rachal and the beneficiary John Reitz. Neither Rachal nor John Reitz signed the trust or indicated their agreement to submit disputes to arbitration; rather, the trust instrument (in the eyes of the Court) simply established the settlor's intent that disputes be resolved by arbitration. The Court relied on the Arizona case, Schoneberger, from 2004 and the California Second Court of Appeal decision in Diaz v. Bukey. Ultimately, the

Rachal court expressed its opinion that a trust is not a contract, and given that arbitration is a creature of contract, a trust settlor cannot bind his beneficiaries to arbitrate trust matters.

Rachal v. Reitz is noteworthy also for its dissent. The five dissenting justices of the en banc panel focused on effectuating the settlor's intent. In the view of the dissent, John Reitz's only claims arose through his status as trust beneficiary granted to him in his father's trust document – therefore, he should be legally bound by the rights and duties set forth in the document. The dissent also called on the Texas Legislature to amend the Texas Arbitration Act to specify that an arbitration provision in a trust agreement is enforceable against the beneficiaries.

II. Trust Management/Attorney Liability

In March 2011, an interesting decision came out of the U.S. District Court, Northern District of Illinois (Grady, J.), in a well-publicized case filed in 2010 by an heiress to General Growth Properties, one of the largest shopping mall developers in the country. Scanlan v. Eisenberg, 2011 WL 862748. Earlier in the litigation, the court had dismissed the claims of the original plaintiff, the life beneficiary Mary Bucksbaum Scanlan, for lack of standing. See Scanlan v. Eisenberg, 2010 WL 4065628. In its 2011 decision, the District Court Judge took up the defendants' motions to dismiss the claims of Mary's minor children as remainderman of a series of trusts.

At all relevant times for purposes of the allegations in the lawsuit, the trustee of the trusts was General Trust Company, an entity controlled by the attorneys who served as estate planning lawyers for the donor, Mary's father. Mary's minor children brought suit against the Trust Company as trustee for various breaches of fiduciary duty. They alleged that the value of the trusts was diminished by the trustee's wrongful conduct by more than $200,000,000.

Specifically, the plaintiffs asserted that the trustee breached its duty by purchasing additional shares of General Growth stock despite an existing overconcentration of General Growth stock in the assets of the trusts, and by extending at least $90,000,000 in low interest, unsecured loans to General Growth corporate insiders without obtaining adequate security and without informing the trust beneficiaries of its decisions. With respect to the first allegation, the plaintiffs cited a phone conversation in which the principal decision maker for the Trust Company told Mary that the additional purchases were intended to "stabilize" the General Growth stock price by showing the market that the Bucksbaum family was continuing to buy stock. This was at a time when the price of the stock was trading at $36.00 per share. Ultimately, the effort at "stabilization" did not work, with the price falling to less than $2.00 per share in the space of a few months. The District Court Judge denied the motion to dismiss this count, based on a theory that the questioned stock purchases exposed the trust beneficiaries to an unreasonable risk of loss that was intended to benefit the beneficiaries of other Bucksbaum family trust as well as the defendant attorneys, who were also substantial investors in General Growth stock. Similarly, the District Court let stand the count in the complaint claiming damages as a result of the low interest, insider loans, based on a theory that the trustee ignored its duty of loyalty to the trust beneficiaries. The District Court also denied the motion to dismiss for failure to provide sufficient information to the trust beneficiaries, finding that, although the law in Illinois was unsettled as to the exact extent of information necessary to be disclosed to beneficiaries during the course of a trust administration, it was likely that the Illinois Supreme Court would at least adopt a standard that required a trustee to disclose "material information needed by beneficiaries for the protection of their interests."

In addition, the Court addressed the individual liability of two of Mr. Bucksbaum's attorneys, who became directors and officers of the Trust Company. The plaintiffs asserted that the attorneys, as agents and officers of the Trust Company, were directly responsible for breach of trust. The attorneys challenged this count asserting that, in essence, the plaintiffs were claiming that the attorneys conspired with the Trust Company or aided and abetted the Trust Company, and that such a theory was not sustainable under Illinois law. The motion judge disagreed, citing Scott and Ascher on Trusts, § 30.6.3 at 2118-21 (4th ed. 2008), for the proposition that "any director or officer who knowingly causes the corporation to commit a breach of trust that results in a loss to a trust administered by the corporation is personally liable to the trust's beneficiaries."

The plaintiffs also alleged that the two attorneys and their law firm "as counsel to the Trust Company, aided and abetted the Trust Company in breaching its fiduciary duties" when the Trust Company engaged in the challenged stock purchases and loans. Again, the lawyer defendants moved to dismiss this count on the ground that, as a matter of Illinois law, a lawyer cannot aid and abet a client. They relied on the principle that a conspiracy requires two separate actors and, because a principal and its agent are considered under the law of agency to be a single actor, there can be no conspiracy between a principal and its agent, i.e. there can be no conspiracy between a lawyer and his client. The defendants analogized the aiding and abetting count with a conspiracy claim and asserted that the aiding and abetting count required two separate actors. The motion judge, however, distinguished between the two theories. Under Illinois law, a claim for aiding and abetting could be successful in the absence of an agreement, whereas a conspiracy claim requires an agreement of the co-conspirators as an element of the claim. Given these principles, the motion judge determined that the Illinois Supreme Court, if

presented with the question, would hold that a lawyer could be liable for aiding and abetting his client to commit breach of fiduciary duty as trustee of a trust.

The plaintiffs also sued the lawyer defendants derivatively on behalf of General Trust Company for legal malpractice for failing to advise the Trust Company not to engage in the challenged stock purchases and loans, and for failing to withdraw from their representation of the Trust Company due to their conflicts of interest. The attorneys moved to dismiss this count on grounds that they owed no duty as attorneys to the beneficiaries and that General Trust Company, the defendants' client and the entity to whom they did owe a fiduciary duty as attorneys, sustained no damages. The District Court Judge quickly disposed of the defendants' arguments, again citing Scott on Trusts and other authorities for the proposition that it is fundamental to the law of trusts that beneficiaries have the right to maintain a suit for the benefit of the trust on a cause of action that belongs to the trust if the trustee refuses to bring the cause of action itself. The beneficiaries act for and on behalf of the recalcitrant trustee and assert the rights of the trust as against the third party defendant; here, against the defendant lawyers and their law firm.

In all, the Court let stand a number of viable and far-reaching counts against the nominal trustee and against the attorneys who organized it, ran it and advised it. This will be an interesting matter to track as it proceeds past the pleading and motion stages.

III. Compensatory and Punitive Damages

Two cases decided in 2011 provide stark examples that egregious conduct by fiduciaries can result in tort liability and significant damages awards, including punitive damages.

Estate of Hoch v. Stifel, 16 A.3d 137 (2011), was decided by the Supreme Judicial Court of Maine on March 1, 2011. Margaret Hoch, a medical doctor born in Germany, lived and

practiced medicine in Maine for forty years. During her time in Maine, Richard and Lorraine Chandler became her close friends and unpaid caregivers. In December 2001, Hoch executed a durable power of attorney naming the Chandlers as her agents. In December 2004, Hoch, then eighty years old, returned to Germany and left the Chandlers to manage her assets, many of which remained in the United States. Hoch was hospitalized in Germany for an injury in 2006 and upon her release she took up residency at the Naturhotel, a hotel and spa owned by John and Gudrun Stifel.

Shortly after moving into the Naturhotel, Hoch complained to a visiting family member that she was not receiving good treatment and that she was afraid of John Stifel. In October 2006, Hoch fled the Naturhotel and was admitted to the hospital for nine days in serious physical condition. Hoch's family tried to move her to a nursing facility in November 2006, but days before the planned move, Hoch revoked a power of attorney she had previously given the family member. In January 2007, Hoch apparently executed a power of attorney naming Gudrun Stifel as her agent. In April 2007, the Stifels began preventing the Chandlers from reaching Hoch by phone, and John Stifel called the Chandlers to tell them not to attempt to communicate with Hoch. He also instructed them to send documentation of Hoch's U.S. assets to him.

In July, 2007, Mary Wagner-Burkhart traveled from Kentucky to Maine to meet with the Chandlers, stating that she was Hoch's "dear friend" and that she had come to Maine to inspect Hoch's property and obtain information about her Maine assets. The Chandlers refused her request. Two days later, John Stifel faxed a copy of a power of attorney executed by Hoch in favor of Wagner-Burkhart to Hoch's bank in Maine, along with a document purporting to revoke the Chandler POA. Wagner-Burkahart then contacted the bank to inquire how to liquidate Hoch's account. Wagner-Burkhart later testified that she was acting at the behest of John Stifel.

In August, 2007, John Stifel sent letters, one of which Hoch apparently countersigned, to the Chandlers and their attorney, offering them the proceeds from the sale of Hoch's Maine home, estimated at $130,000, to "resolve this situation now and without using the Courts."

Having become quite concerned, the Chandlers made an unannounced visit to the Naturhotel in September 2007 and found Hoch bedridden with bruises and severe bedsores, moaning and in pain, extremely thin, dehydrated and filthy. The Chandlers removed Hoch to a hospital where she remained for several days. The Chandlers then had to return to the U.S., leaving Hoch in Germany. They began making arrangements for Hoch's return to the U.S., but could not contact Hoch, except for one phone call monitored by the Stifels.

Thereafter, the Chandlers, acting on behalf of Hoch pursuant the power of attorney, filed a six-count complaint seeking declaratory judgment, injunctive relief and damages for various torts including fraud, undue influence/constructive trust and civil conspiracy. The Court granted a temporary restraining order to prevent dissipation of Hoch's money and assets and to end the intimidation and abuse by the Stifels.

Hoch died on June 24, 2008. After her death, the Chandlers learned that, less than a year after moving to the Naturhotel, Hoch had executed a will naming the Stifels as her sole heirs.

After lengthy procedural wrangling, in July 2008 the Court ordered that (1) the Stifels were defaulted on a motion for contempt for failure discovery violations and had until August 1 to cure the default by complying and (2) they were defaulted on all counts of the complaint for failure to comply with the order compelling discovery.

Following a hearing on damages, the court entered final judgment in favor of the Chandlers on all counts of the complaint. The court found the Stifels liable for $3,941,756 in compensatory damages and created a constructive trust against the Stifels in that amount. In

addition, finding express and implied malice by clear and convincing evidence, the court awarded $3 million in punitive damages. The Stifels appealed claiming lack of personal jurisdiction, improper venue, improper entry of default judgment, compensatory damages and punitive damages. Aside from reducing the compensatory damages award by $200,000, the Maine Supreme Judicial Court affirmed in all respects.

With respect to the award of compensatory damages, the Court held that by virtue of the tortious actions they took before Hoch's death, the Stifels proximately caused damage to Hoch before her death and to her estate after death. Accordingly, the trial court did not err as a matter of law in admitting evidence of transfers occurring "by operation of law" under the German will or other post-death transfers. The Court then conducted a "highly deferential" assessment of the sufficiency of the evidence of damages. With a slight alteration to the valuation of a brokerage account, the Court found that the evidence sufficiently supported an award of $3,746,753.50.

The Court noted that, as a court of general jurisdiction, the trial court has jurisdiction to grant equitable relief, including imposition of a constructive trust. It cited to a Tennessee case, Watkins v. Watkins, 160 Tenn. 1, 22 S.W.2d 1, 2 (1929), to support the imposition of a constructive trust over assets located in a foreign country. The Court noted, however, that "[w]hether a German court will enforce that aspect of the judgment is an issue outside our reach."

Finally, on the issue of punitive damages, the Court considered (1) the reprehensibleness of the conduct, (2) the amount awarded in relationship to the harm, and (3) the amount compared with sanctions imposed for similar behavior. The Court also considered mitigating circumstances, including the financial situation of the Stifles. The Court found that the record supported the conclusion "that the Stifels used their influence and superior position to virtually

imprison an elderly, infirm, and utterly dependent woman; they prevented meaningful contact between her and her loved ones for the apparent purpose of having unencumbered access to her and to her wealth; they used fraud and undue influence to gain access to her assets; and they caused her to live her remaining days in wretched, inhumane conditions."

As to the amount of the award, the Court acknowledged that it was an objectively large number, but not inappropriate given the harm, which was nearly $4,000,000. The Court cited other Maine cases in which the ratio of punitive damages to compensatory damages was as high as sixteen to one. Accordingly, the Court found that the ratio of less than one to one here was not inherently excessive.

Though not constitutionally required to do so, the Court considered the Stifels' financial situation in assessing the punitive damages award and found that, as the Stifels are owners of a hotel and spa, the punitive damages award was not excessive.

The Court concluded its opinion with a word of caution: "Maine has an obvious interest in deterring the Stifels, and others, from engaging in such outrageous conduct – an extreme example of elder abuse – in the future."

Fullerton-Eichenlaub v. Rellamas, 2011 WL 197833 (E.D. Kentucky 2011) likewise awarded compensatory and punitive damages in a case involving undue influence and fraud. Here the U.S. District Court in the Eastern District of Kentucky found that, while she was acting as Arthur Fullerton's attorney-in-fact and the Trustee of the Arthur L. Fullerton Revocable Living Trust ("Arthur's Trust"), and while Arthur lacked mental capacity to know or understand the nature of the transactions, Tricia Fullerton-Eichenlaub misappropriated funds from Arthur's Trust and personal checking accounts by means of undue influence and fraud, that she breached

her fiduciary duties as Trustee of the Trust, and she was liable for tortious interference with an inheritance.

After hearings on the respondent's motion for partial summary judgment, motion to remove the trustee and motion for sanctions, the Court allowed the motion for summary judgment and motion to remove trustee and ordered that Ms. Fullerton-Eichenlaub pay compensatory damages in the amount of $567,829.37. The Court also ordered that Ms. Fullerton-Eichenlaub transfer all right, title and interest in personal and real property she had misappropriated to herself back into Arthur's Trust. Finally, because the Court found that the "outrageous actions" of Ms. Fullerton-Eichenlaub constituted "oppression, fraud or malice" and because she "acted with a wanton and reckless disregard for the property of Arthur and his beneficiaries" and "in order to deter others from following her example," the Court awarded punitive damages in the amount of $1,371,551.62.

IV. Prudent Investing During the Economic Downturn

In February of this year, the Court of Appeals of Washington decided In re Mark Anthony Fowler Special Needs Trust, 160 Wash. App. 1001 (2011), in which it considered a trust which lost 12.13% of its market value between October 1, 2007 and September 30, 2008. The Court held that the fiduciary properly exercised its discretion to not liquidate stocks that had decreased in value during this period.

In 2000, 13-year-old Mark Anthony Fowler suffered an injury causing brain damage. His parents put the settlement proceeds from the resulting lawsuit into the Mark Anthony Fowler Special Needs Trust. The Trust was funded with $940,000 and an annuity. The trust agreement stated that the Trust's purpose was to "provide for [Fowler's] extra and supplemental care...includ[ing] supplemental care, support, education and activities" and it was to be

"conserved and maintained for the special needs of [Fowler] throughout his lifetime." The trust agreement named Wells Fargo as trustee. It did not contain any provisions to guide the trustee's discretion with regard to investments. Based on Fowler's long-term needs, Wells Fargo selected a "balanced investment" approach, with the objective of maintaining the Trust's assets in 60% equities and 40% fixed income.

The trust agreement required the trustee to submit an annual accounting to the superior court for review and approval and provided that "[a]t each accounting review the court shall review and approve all fees paid to any professional Trustee." On December 16, 2008, Wells Fargo filed its seventh annual accounting, covering the period from October 1, 2007 through September 30, 2008. The accounting reflected a drop in the Trust's market value from $1,065,934 to $870,790 during that period. Despite the significant loss, the Trust's stocks (19.5% loss) outperformed the Standard & Poor's 500 index by nearly 2.5% and its cash equivalents (3.67% gain) outperformed the 91-day treasury bill yield by over 1%. The Trust's bonds (.51% gain), however, were outperformed by the Lehman Brothers Intermediate Government/Credit A+ index (6.12% gain).

The superior court appointed a GAL to determine "(1) whether the Trustee complied with the prudent investor rule; (2) whether funds should be invested in insured deposits; and (3) whether the Trustee fees should be approved." The GAL submitted a written report concluding Wells Fargo had complied with the prudent investor rule and had properly applied the "total asset management" approach as required by Washington law. The GAL concluded that the current investment portfolio was appropriate given the economic conditions and recommended that the court approve the trustee's fees.

The GAL report notwithstanding, the superior court then entered an order approving the accounting "except as to investment performance" and reserved the issue of trustee fees. The superior court also ordered that "the trustee shall present the court with a plan to transfer a portion of assets to insured deposits showing fees and costs of such a plan to the trust…[n]o transfers or liquidation are hereby authorized until said hearing on approval of a plan."

After Wells Fargo's motion for reconsideration and/or clarification of the orders was denied, the Trustee appealed. The Court of Appeals reviewed the Trustee's investment approach for abuse of discretion, noting that, "judicial intervention is not warranted merely because the court would have differently exercised the discretion."

The Court stated that "[a] court's focus in applying the prudent investor rule is the trustee's conduct, not the end result." It also emphasized that although the Trust's overall performance is a factor in evaluating a trustee's performance, it is not by itself controlling. After reviewing Wells Fargo's investment decisions in light of all circumstances, the Court, recognizing that the Trust's losses resulted from market volatility rather than from Wells Fargo's selection of inferior assets, concluded that Wells Fargo properly exercised its discretion during the accounting period because it adequately considered economic conditions, the trust's duration, and Fowler's long-term needs.

The Court of Appeals remanded to the superior court for entry of an order approving the accounting and a determination of the trustee's fees.

V. Standing

In October, 2011, the District Court of Appeal of Florida, Fourth District revisited a matter it has initially decided in 2006. In the 2006 case, Siegel v. Novak, 920 So.2d 89 (2006), the Court held that, under New York law, after the death of the settlor, the beneficiaries of a

revocable trust have standing to challenge pre-death withdrawals from the trust which are outside the purposes authorized by the trust and which were not approved or ratified by the settlor personally or through a method contemplated through the trust instrument. The case was then remanded to the trial court. In Siegel v. JP Morgan Chase Bank, 71 So.3d 935 (2011), the Court reversed the trial court's holding that the beneficiaries did not have standing to challenge certain pre-death distributions and expenditures from a trust by the trustee.

Dorothy Rautbord established a trust to benefit herself for life, with the remainder to be distributed to her children who survived her, including her sons, Daniel and Simon Siegel. The trust permitted the trustee to pay from income and principal, so much "as the Trustee, in its sole discretion, shall deem appropriate or advisable for the support, maintenance, health, comfort or general welfare of the Settlor." The trust reserved to the Settlor the power to amend, modify or revoke the trust, in whole or in part, specifically excluding any attorney-in-fact from exercising those powers. Rautbord appointed JP Morgan Chase as her trustee in 1995 and at some point thereafter, she developed severe dementia.

Rautbord also executed a power of attorney to her daughter, Judith Novak. The power of attorney gave Novak a number of powers including the power to make gifts to individuals or charitable organizations "provided that such gift either (i) shall be reasonably consistent with any pattern of my giving or with my estate plan or (ii) shall not exceed the annual exclusion available from time to time for federal gift tax purpose," but it specifically excluded any power to revoke or amend or withdraw principal from the trust. During Rautbord's life, Novak made large withdrawals of principal from the trust by signing revocation letters, which JP Morgan Chase approved. In addition, the trust issued checks for many gifts, and JP Morgan Chase spent considerable amounts for what it termed Rautbord's general welfare.

After Rautbord's death in 2002, JP Morgan Chase filed a complaint for a judicial accounting, seeking to discharge its liability as trustee. Rautbord's sons, Daniel and Simon, along with Simon's wife and two children, filed an answer raising affirmative defenses, alleging that some of trust expenditures may not have been for Rautbord's support, maintenance and general welfare. The trial court granted JP Morgan Chase's motion for summary judgment, finding that the Siegels lacked standing to challenge any distributions made prior to Rautbord's death, because the trust was revocable, and the brothers had no present interest during Rautbord's life. The brothers appealed and the Court of Appeal reversed and remanded.

Following remand, JP Morgan Chase filed an amended complaint and the Siegels filed a counterclaim for breach of fiduciary duty and a cross-claim against Novak for an accounting, breach of fiduciary duty and interference with an expectancy. The central issue of the case remained the propriety of distributions authorized by the Trustee prior to Rautbord's death. Specifically, the Siegels challenged four categories of distributions: (1) JP Morgan Chase had issued 111 checks for gifts to friends and family from 1995 to 2002, some of which were to people employed by Novak and the JP Morgan Chase employee who administered the Trust; (2) Novak, as attorney-in-fact, forgave substantial debts owed Rautbord; (3) pursuant to the Trust's terms, upon Rautbord's death, a trust for the benefit of her sister-in-law was to be established, but Novak established and funded the trust prior to Rautbord's death, incurring substantial gift tax liability; and (4) excessive expenditures were made for Rautbord's "welfare."

At the commencement of trial, the court made a preliminary ruling concerning the Siegels' standing to challenge each of the aforementioned categories of distributions, stating its task as follows: "[T]he Court is to decide whether the challenged withdrawals from the Trust are outside the purposes authorized by the Trust (that is, not appropriate or advisable for the support,

maintenance, health, comfort or general welfare of Ms. Rautbord), and were not approved or ratified by the settlor personally or through a method contemplated through the Trust instruments." The trial court then made specific findings with respect to each category of challenged expenditures, concluding that all gifts in each category were permitted and therefore the Siegels had no standing to challenge them. The Siegels appealed.

The Court of Appeal reversed, reiterating that its prior decision determined that the Seigels *did* have standing to challenge the trustee's actions, "because they had a direct interest in the corpus of the trust after their mother's death." The Court stated that "[t]he issue of whether the withdrawals and expenses were appropriate and authorized was not a preliminary standing question but the entire substance of the proceeding, i.e., whether the trustee and attorney-in-fact breached their fiduciary duties." The Court remanded for a trial on the breach of fiduciary duty claims.