



## Texas Fiduciary Litigation Update 2014-2015

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# Introduction

- Financial institutions are routinely called upon to take fiduciary roles in managing assets.
- This role can require the fiduciary to act and file suits, and it can also open the fiduciary up to potential liability.
- This presentation is intended to provide an update on current legal precedent that impacts fiduciaries.

# Duty to Fund Trust

- *Tolar v. Tolar*, No. 12-14-00228-CV, 2015 Tex. App. LEXIS 5119 (Tex. App.—Tyler May 20, 2015, no pet. hist).
- Husband and wife executed trust in 2006 that named their children and husband's children from a previous marriage as beneficiaries
- Wife was a trustee.
- Trust had an exhibit listing assets being transferred into the trust, but it generally listed real estate in Louisiana.

# Duty to Fund Trust

- Husband dies, and his child from a previous marriage sued the wife (stepmother) for breach of fiduciary duty for not transferring Louisiana real property into the trust.
- Trial court granted summary judgment for the wife stating that she had no duty to execute deeds to convey any real property to the trust.
- Court of appeals stated: “The trustee shall administer the trust in good faith according to its terms and the Texas Trust Code.”

# Duty to Fund Trust

- “The powers conferred upon the trustee in the trust instrument must be strictly followed.”
- “High fiduciary standards are imposed upon trustees, who must handle trust property solely for the beneficiaries’ benefit.”
- Son alleged that wife and husband intended to transfer real estate into the trust and that she had a duty to do so.
- Court held that property was not transferred to the trust via the exhibit – not legally competent.

# Duty to Fund Trust

- Wife's duties arose from the wording of the trust instrument.
- There was nothing in the trust instrument requiring wife to correct flaws in the attempted initial conveyance.
- Moreover, there was nothing in the trust directing wife to convey the Louisiana real property, or any property she owned, to the trust.
- Court affirmed judgment for wife.

## Duty To Act With Ordinary Prudence

- *In re Estate of Boylan*, No. 02-14-00170-CV, 2015 Tex. App. LEXIS 1427 (Tex. App.—Fort Worth February 12, 2015, no pet. hist.).
- Father died in 2006, and he named his son Cooper as executor.
- Other son Lonnie opposed application to probate will due to testamentary capacity.

# Duty To Act With Ordinary Prudence

- The will had a no-contest clause.
- After some discovery, Lonnie dismissed his opposition.
- Cooper believed that Lonnie's action violated the no-contest clause and refused to distribute any estate property to him.
- After a bench trial, the court found that Lonnie did not violate the clause, but also held that Cooper did not violate his fiduciary duty by not distributing the estate at that time.



# Duty To Act With Ordinary Prudence

- Court of appeals affirmed the finding that the no-contest clause did not apply due to the good-faith exception in Texas Estates Code section 254.005 – clauses will not be enforced where just cause existed for bringing the action and the action was brought in and maintained in good faith.
- Court reversed on breach of fiduciary duty.

# Duty To Act With Ordinary Prudence

- Executor owes the same duties as trustee.
- Trustee owes a duty to exercise the judgment and care that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs.
- A trustee commits breach of trust not only where he violates a duty in bad faith or negligently but also where he violates a duty because of a mistake.

# Duty To Act With Ordinary Prudence

- Breach based on mistake may be found when a trustee interprets trust provisions as permitting certain action or inaction that a court later determines to be improper. A breach of trust may be found even though the trustee acted reasonably and in good faith, perhaps even in reliance on advice of counsel. Trustees can ordinarily be protected from this risk by obtaining instructions concerning uncertainties of law or interpretation.
- Restatement (Third) of Trusts § 93 cmt. c (2012).

# Duty To Act With Ordinary Prudence

- “Cooper’s mistake was one of law, and the trial court correctly concluded that Cooper’s failure to give Lonnie his inheritance was not excused by the language of the will. The defense of good faith was not available to him.”
- Court noted that Cooper did not seek judicial guidance or seek advice of counsel. See Restatement (Third) of Trusts § 77 cmt. b(2), c (“Taking the advice of legal counsel on such matters evidences prudence on the part of the trustee. . . . Lack of awareness or understanding of the terms of the trust normally will not excuse a trustee from liability.”).
- Cooper was personally liable for the breach as he benefited from it.

# No-Contest Clause

- *Ard v. Hudson*, No. 02-13-00198-CV, 2015 Tex. App. LEXIS 8727 (Tex. App.—Fort Worth August 20, 2015, no pet. history).
- A beneficiary sued testamentary trustees and executors for breach of fiduciary duty and also sought temporary injunctive relief and also sought a receiver.
- The trial court granted summary judgment for the defendants on the basis of a no-contest clause.

# No-Contest Clause

- Court of appeals held that a breach of a forfeiture clause will be found only when the beneficiary's or devisee's actions fall clearly within the express terms of the clause.
- Court mentioned other precedent where challenging a fiduciary did not trigger a no-contest clause.
- Defendants agreed with that, but argued that the beneficiary's requests for temporary and permanent injunctive relief and her motions to suspend her brothers as co-trustees and to appoint a receiver triggered the clause.

# No-Contest Clause

- “[The] inherent right [to challenge a fiduciary] would be worthless absent the beneficiary’s corresponding inherent right to seek protection during such an ongoing challenge of what is left of his or her share of the estate or trust assets, and any income thereon, that the testator or grantor, as the case may be, intended the beneficiary to have.”
- Court reversed the summary judgment for the defendants.

# No-Contest Clause

- Defendants also argued that a condition precedent also barred the beneficiary's claims: "Each benefit conferred herein is made on the condition precedent that the beneficiary shall accept and agree to all provisions of this Will."
- Court rejected this argument, holding: "We construe the condition precedent language located within the forfeiture clause to be consistent with the forfeiture clause as a whole."



# Claims Against Trustees

- *Ward v. Standford*, 443 S.W.3d 334 (Tex. App.—Dallas 2014, pet. filed).
- A father and mother set up an irrevocable trust in the 1970s and transferred many assets to it.
- In the 1980s, father and his company borrowed money from the trust and issued a note.

# Claims Against Trustees

- The father and his company defaulted, and the trustees sued to enforce the note.
- The trustees and father settled in the mid-1990s, and they entered into a renewal note with a principal amount of \$2 million that was due in January of 2000.
- In 1998, the father had missed several interest payments, and the trustees discussed whether to file suit again.

# Claims Against Trustees

- The trustees decided to not file suit at that time and communicated that to the beneficiary.
- Ultimately, the father defaulted on the interest payments and the underlying principal payment.
- The trustees never sued the father to enforce the debt.

# Claims Against Trustees

- In 2008, the beneficiary, a son, discovered that the father denied making the renewal note and that the trustees never pursued claims thereon.
- The beneficiary sued the trustees for breach of fiduciary duty and later added the father for aiding same.
- The trial court dismissed the claims due to limitations.
- A cause of action generally accrues when: 1) a wrongful act 2) causes some legal injury.
- There were two separate claims and two different accrual dates: 1) the father's failure to pay interest and principal payments under the note, and 2) the trustees failure to pursue the note claim.

# Claims Against Trustees

- As the two-million dollar principal payment was due on February 1, 2000, the Trust's claim for that payment was extinguished via a six-year limitations period on February 1, 2006.
- At a different time, the Son's claims against the Trustees accrued for not pursuing the Trust's claim against the Father.
- Those claims would accrue, at the earliest, when the "wrongful acts" occurred.

# Claims Against Trustees

- The court held: “just as the question of whether a party breached a fiduciary duty is generally treated as a fact question, we conclude the date on which the Trustees' inaction can be said to cross the line into a breach of their fiduciary obligations to appellant remains a fact question.”
- In other words, at what point did the trustees' inaction become a “wrongful act”?
- The court of appeals held that a jury must determine that issue and remanded for trial.

# Claims Against Trustees

- *Wilkinson v. USAA Fed. Sav. Bank Trust Servs.*, No. 14-13-00111-CV, 2014 Tex. App. LEXIS 7091 (Tex. App.—Houston [14th Dist.] July 1, 2014, pet. denied).
- An attorney hired by a trustee sued the trustee for defamation and breach of fiduciary duty because the trustee took a position in probate court that the attorney should not be paid.
- The trustee filed a motion for summary judgment on the basis of judicial privilege, which was granted.

# Claims Against Trustees

- Any statement made in the trial of a case, by anyone, cannot constitute the basis for a defamation action or any other action.
- The court of appeals affirmed: “Because the essence of each of Wilkinson’s claims for defamation, fraud, and breach of fiduciary duty is that she suffered injury as a result of USAA’s and WKHB’s communication of allegedly false statements during a judicial proceeding, we conclude that the absolute privilege bars all of her tort claims.”



# Trustees Paying Lawyers

- *Zaffirini v. Guerra*, No. 04-14-00436-CV, 2014 Tex. App. LEXIS 12761 (Tex. App.—San Antonio November 26, 2014, no pet.).
- Beneficiaries sued the trustees of a trust for breach of fiduciary duty and removal.
- Trustees paid their attorneys from the trust to defend the suit.
- Beneficiaries obtained a temporary injunction preventing the payment of fees from the trust.

# Trustees Paying Lawyers

- To obtain a temporary injunction, an applicant normally has to plead and prove a probable right of recovery and an irreparable harm in the interim.
- Court of appeals reversed the injunction, holding there was no evidence of irreparable harm: that the trustees could not pay back the money.
- Conflicts with *183/620 Group Joint Venture v. SPF Joint Venture*, 765 S.W.2d 901 (Tex. App.—Austin 1989, writ dismissed w.o.j.) (irreparable injury does not apply in breach of fiduciary duty suit where injunction seeks to restrain parties from expending sums held by them as fiduciaries).

# Trustees Paying Lawyers

- *Lesikar v. Moon*, No. 01-12-00406-CV, 2014 Tex. App. LEXIS 10041 (Tex. App.—Houston [1st Dist.] September 4, 2014, no pet.).
- A trustee personally paid \$750,000 in attorney's fees for a trust in the course of litigation.
- After that suit was resolved, the trustee filed a second suit to obtain reimbursement.
- Court held that trustee should have sought the award in the first suit, and that res judicata barred the reimbursement claim in the second suit.

# Removal Of Trustee

- *In the Guardianship of Hollis*, No. 14-13-00659-CV, 2014 Tex. App. LEXIS 12038 (Tex. App.—Houston [14th Dist.] November 4, 2014, no pet.).
- A special needs trust's trustee used \$67,000 to build a pool on the beneficiary's parent's property.
- The trial court ordered show cause hearings to determine the appropriateness of the expense.
- The trustee then spent \$23,000 in attorney's fees to defend itself in the show cause hearings.
- Court removed the trustee because it sought reimbursement from trust funds for defending its actions.

# Removal Of Trustee

- One ground for removal is being guilty of gross misconduct or mismanagement.
- That means more than ordinary misconduct and implies serious and willful wrongdoing.
- The appellate court reversed the removal, stating that the trustee had the right to reimburse itself for reasonable costs and expenses in connection with administering or protecting the trust.
- Court cited to *Grey v. First Nat'l Bank*, 393 F.2d 371 (5th Cir. 1968) (stating that a trustee may charge his trust for attorney's fees that the trustee, acting reasonably and in good faith, incurs in defending a charge of breach of trust).

# Claims Against Fiduciary

- *Moczygemba v. Moczygemba*, No. 04-14-001100-CV, 2015 Tex. App. LEXIS 1536 (Tex. App.—San Antonio February 18, 2015, no pet. hist.).
- Mother sold a ranch to two sons and later sued them for breach of fiduciary duty for not disclosing to her that the deeds also transferred mineral interests.
- Trial court granted summary judgment for the defendants due to the statute of limitations.

# Claims Against Fiduciary

- Court of appeals affirmed, holding that the discovery rule did not apply.
- The discovery rule applies where injury is inherently undiscoverable and is objectively verifiable.
- There was a good argument that injury was discoverable because the deeds conveyed minerals.
- But the court of appeals held that the injury was not objectively verifiable.
- Depositions were not objectively verifiable evidence, and deeds did not prove that mineral interests were wrongfully transferred, just that they were transferred.

# Claims Against Fiduciary

- *Fetter v. Brown*, No. 10-13-00392-CV, 2014 Tex. App. LEXIS 11209 (Tex. App.—Waco October 9, 2014, pet. denied).
- Beneficiary sued trustee for breach of duty, and trial court awarded beneficiary over \$1.3 million in actual damages and \$.7 million in punitive damages.
- Court held that the damages should have been awarded to the successor trustee and not to the beneficiaries.
- Court also held that damages should not have been decreased by the trustee's ownership percentage (50%) in the trust as a beneficiary – that would be done when the trust terminates.



# Claims Against Fiduciary

- *In re Estate of Boyle*, No. 11-13-00151-CV, 2014 Tex. App. LEXIS 13553 (Tex. App.—Eastland December 19, 2014, no pet.).
- Beneficiaries sued a trustee for mismanagement for allegedly transferring trust assets to entities in which the trustee's employees had an interest.
- When a plaintiff alleges self-dealing by the fiduciary, a presumption of unfairness arises.
- Court held that no such presumption arose in this case because the alleged transactions were not between the bank/trustee and the estate where the trustee profited or obtained a benefit.

# Claims Against Fiduciary

- *Valdez v. Hollenbeck*, No. 13-0709, 2015 Tex. LEXIS 556 (Tex. June 12, 2015).
- Parties attempted to sue an administrator for thefts from the estate by a third person around 1995 after the court had discharged the administrator in 1996.
- Texas Supreme Court held that all bills of review (statutory or equitable) from probate proceedings have a two-year statute of limitations under Texas Estates Code Section 55.251, which begins at the end of any tolling period.

# Claims Against Fiduciary

- Court recognized two doctrines that may delay accrual or toll limitations: (1) the discovery rule and (2) fraudulent concealment.
- The discovery rule applies on a categorical basis to injuries that are both inherently undiscoverable and objectively verifiable.
- When applicable, the discovery rule defers the accrual of the cause of action until the injury was or could have been reasonably discovered.

# Claims Against Fiduciary

- Unlike the discovery rule's categorical approach, fraudulent concealment is a fact-specific equitable doctrine that tolls limitations until the fraud is discovered or could have been discovered with reasonable diligence.
- When a defendant is under a duty to make a disclosure but conceals the existence of a cause of action from the party to whom it belongs, the defendant is estopped from relying on the defense of limitations until the party learns of the right of action or should reasonably have discovered it.

# Claims Against Fiduciary

- The estoppel effect of fraudulent concealment ends when a party learns of facts, conditions, or circumstances which would cause a reasonably prudent person to make inquiry, which, if pursued, would lead to the discovery of the concealed cause of action.
- Knowledge of such facts is in law equivalent to knowledge of the cause of action.

# Claims Against Fiduciary

- Claims accrued in 2003 when a receiver informed the beneficiaries that the estate had been undervalued due to misappropriations by a third party, and disclosed an amount therefore.
- “[T]he August 2003 report made clear that the assets on hand at Bernard’s death vastly exceeded the amounts stated in the March 1994 inventory. A half-million-dollar discrepancy is considerable and gives rise to a duty to make further inquiry.”
- Court entered judgment for the administrator and surety company due to the running of limitations.

# Tortious Interference Claims

- *Jackson Walker, LLPO v. Kinsel*, No. 07-13-00130-CV, 2015 Tex. App. LEXIS 3586 (Tex. App.—Amarillo April 10, 2015, pet. filed).
- Leseey and E.A. Kinsel owned a ranch, and when E.A. died, he divided his half between his children and Leseey.
- Leseey owned 60% at that point.

# Tortious Interference Claims

- Leseey placed her interest into an intervivos trust, which provided that upon her death, her interests would pass to E.A.'s children.
- Leseey became frail and moved near a niece, Lindsey, and nephew, Oliver.
- Lindsey and Oliver referred Leseey to an attorney to assist in drafting a new will.
- The attorney informed E.A.'s children that Leseey needed to sell the ranch to pay for her care.



# Tortious Interference Claims

- At that time, Lesey had approximately \$1.4 million in liquid assets and did not need to sell the ranch.
- Not knowing Lesey's condition, E.A.'s children agreed to sell, and the ranch was sold.
- Lesey's \$3 million in cash went into her trust.
- Lindsey, as a residual beneficiary in the trust, would receive most of the money – not E.A. children.
- The attorney also effectuated amending the trust to grant Lindsey and Oliver greater rights, while advising them to withhold that information from E.A.'s children.
- E.A.'s children sued Lindsey, Oliver, and the attorney for tortious interference and other tort claims.

# Tortious Interference Claims

- The jury returned a verdict for E.A.'s children.
- The court of appeals first addressed the tortious interference with inheritance claim: “Someone who by fraud, duress or other tortious means intentionally prevents another from receiving from a third person an inheritance or gift that he would otherwise have received is subject to liability to the other for loss of the inheritance or gift.”
- The San Antonio, Houston (1st Dist.) and El Paso courts have recognized such a claim.

# Tortious Interference Claims

- The Amarillo court reviewed several Fort Worth opinions, where the case had been transferred from, to see if Fort Worth had recognized such a claim, and determined that Fort Worth had not.
- The court held that it was solely the authority of the Texas Legislature or the Texas Supreme Court to create a new cause of action.
- Court rendered for the defendants refusing to recognize that new cause of action.

# Tortious Interference Claims

- The court reversed on the fraud and other tort claims due to insufficient evidence of damages.
- The court affirmed the mental incompetence finding on the trust changes and sale of the ranch.
- The court affirmed in part a finding of a constructive trust, making Lindsey hold any proceeds that should have gone to E.A.'s heirs in trust for them.
- The attorney was the only party to escape liability.

# Arbitration

- *Archer v. Archer*, No. 05-13-013410-CV, 2014 Tex. App. LEXIS 6551 (Tex. App.—Dallas June 17, 2014).
- Trust stated that: “We request that any questions or disputes that may arise during the administration of this trust be resolved by mediation and if necessary, arbitration in accordance with the Uniform Arbitration Act.”
- Beneficiaries sued trustee for breach of fiduciary duty, and the trustee sought to compel arbitration, which was denied.

# Arbitration

- Clear that mandatory arbitration clauses in trust documents are enforceable. See *Rachal v. Reitz*, 403 S.W.3d 840, 843 (Tex. 2013).
- After reviewing the trust in whole, the court held that the provision was precatory and not mandatory and affirmed the trial court's refusal to compel arbitration.

# Arbitration

- *Greenberg Traurig, LLP v. Nat'l Am. Ins. Co.*, 448 S.W.3d 115 (Tex. App.—Houston [14th Dist.] 2014, no pet.).
- Court held that an attorney did not owe a fiduciary duty to explain an arbitration clause in its engagement agreement.
- Court enforced the arbitration clause.

# Claims Against Attorneys

- *Donaldson v. Mincey*, No. 05-13-00271-CV, 2014 Tex. App. LEXIS 13522 (Tex. App.—Dallas December 17, 2014, pet. filed).
- Attorney drafted estate documents for a father.
- Attorney later drafted a trust amendment that would have increased distributions from a trust to the father's children.
- Father never signed the amendment and died shortly thereafter.



# Claims Against Attorneys

- The children, as personal representatives of the estate, sued the lawyer for breach of fiduciary duty and negligence.
- The trial court granted summary judgment for the attorney.
- At common law, an attorney owes a duty of care only to his or her client, not to third parties who may have been damaged by the attorney's negligent representation of the client.
- No duty is owed to non-client beneficiaries, even if they are damaged by the attorney's malpractice.

# Claims Against Attorneys

- While disappointed heirs cannot seek to dispute the size of their bequest or their omission from an estate plan, an estate's personal representative can seek to recover damages incurred by the estate.
- Court affirmed the summary judgment because the claims only related to the apportionment of the estate and not that the size of the estate was damaged.

# Will Contest Cases

- *In re Estate of Parker*, No. 06-14-00099-CV, 2015 Tex. App. LEXIS 6632 (Tex. App.—Texarkana June 30, 2015, no pet. history) (court affirmed jury’s finding of lack of mental competence).
- *In re Adkins*, No. 13-15-00066-CV, 2015 Tex. App. LEXIS 6330 (Tex. App.—Corpus Christi June 23, 2015, original proceeding) (court affirmed trial court’s overruling of jury’s finding of undue influence and lack of mental competence).

# Will Contest Cases

- *Jackson Walker, LLPO v. Kinsel*, No. 07-13-00130-CV, 2015 Tex. App. LEXIS 3586 (Tex. App.—Amarillo April 10, 2015, pet. filed) (court affirmed jury's finding of lack of mental competence).
- *Janes v. Adams*, No. 10-14-00319-CV, 2015 Tex. App. LEXIS 7070 (Tex. App.—Waco July 9, 2015, no pet. history) (court affirmed trial court's judgment that will was not procured by fraud, insane delusion, or undue influence).

# Procedural Cases

- *Ablon v. Campbell*, No. 05-13-01465-CV, 2015 Tex. App. LEXIS 1514 (Tex. App.—Dallas February 17, 2015, no pet. hist.) (order concerning the establishment of a trust was void because all necessary parties were not joined).
- *BBVA Compass Inv. Solutions, Inc. v. Brooks*, No. 02-13-00047-CV, 2015 Tex. App. LEXIS 1431 (Tex. App.—Fort Worth February 12, 2015, no pet. hist.) (tort and contract claims against IRA custodian based on custodian allegedly wrongfully sending funds to third-party under fraudulent power-of-attorney document were sent to arbitration).

# Procedural Cases

- *Warren v. Weiner*, No. 01-13-01077, 2015 Tex. App. LEXIS 1158 (Tex. App.—Houston [1st Dist.] February 5, 2015, no pet. hist.) (probate court had jurisdiction over modification of trust for children even though divorce court action also concerned the trust).
- *Weyel v. Hopson*, No. 04-14-00085-CV, 2015 Tex. App. LEXIS 1029 (Tex. App.—San Antonio February 4, 2015, no pet. history) (in a case dealing with the scope of duties owed by an IRA custodian, customer waived appeal by failing to challenge all grounds upon which a summary judgment could have been granted).

# Procedural Cases

- *Jordan v. Lyles*, No. 12-13-00035-CV, 2015 Tex. App. LEXIS 911 (Tex. App.—Tyler January 30, 2015, no pet. hist.) (heirs had standing to assert breach of fiduciary duty claim against holder of power of attorney for executing new account agreement giving her JTROS rights and that conduct did constitute a breach of duty).
- *Blanchard v. McNeill*, No. 03-14-00511-CV, 2015 Tex. App. LEXIS 635 (Tex. App.—Austin January 23, 2015, no pet. hist.) (order transferring trust dispute to a probate court was not an appealable probate order).
- *Guillermo Benavides Garza Inv. Co. v. Benavides*, No. 04-13-00453-CV, 2014 Tex. App. LEXIS 7332 (Tex. App.—San Antonio July 9, 2014, no pet.) (temporary injunction order precluding a vote to remove a director from an entity partially owned by a trust was reversed because there was no showing of irreparable harm).

# Procedural Cases

- *Stauffer v. Nicholson*, 438 S.W.3d 205 (Tex. App.—Dallas 2014, no pet.) (claims against trustee in that capacity were dismissed due to personal jurisdiction, and claims against trustee in individual capacity were dismissed because statutory probate court did not have subject matter jurisdiction).
- *Favour Leasing, LLC v. Mulligan*, No. 05-13-0100-CV, 2014 Tex. App. LEXIS 9180 (Tex. App.—Dallas August 19, 2014, no pet.) (claims against trusts were dismissed because there was no personal jurisdiction in Texas over them).



# Procedural Cases

- *In the Estate of Luthen*, No. 13-12-00638-CV, 2014 Tex. App. LEXIS 10625 (Tex. App.—Corpus Christi September 25, 2014, no pet.) (trial court erred in overruling objection to appointment of executor where court did not allow objecting parties to present evidence).
- *In re Estate of Rhoades*, No. 02-15-00081-CV, 2015 Tex. App. LEXIS 5945 (Tex. App.—Fort Worth June 11, 2015, no pet. history) (trial court's summary judgment order declaring construction of will was not final, appealable order because of undisposed of attorney's fees claim).

# Procedural Cases

- *In re Adkins*, No. 13-15-00066-CV, 2015 Tex. App. LEXIS 6330 (Tex. App.—Corpus Christi June 23, 2015, original proceeding) (court denied mandamus petition for granting of new trial from will contest after detailed review of the evidence supporting the trial court’s ruling).
- *In re Estate of Romo*, No. 08-13-00271-CV, 2015 Tex. App. LEXIS 6401 (Tex. App.—El Paso June 24, 2015, no pet. history) (order denying application of 2006 will was not final where trial court did not also rule on application to probate earlier will under Estates Code Section 256.101, which requires a court to hear all applications for probate of multiple wills together).

# Procedural Cases

- *In re Longoria*, No. 14-15-00261-CV, 2015 Tex. App. LEXIS 7349 (Tex. App.—Houston [14th Dist.] July 16, 2015, original proceeding) (court enforced forum-selection clause regarding claims of tortious interference with inheritance rights, breach of fiduciary duty and other claims that arose from a settlement agreement containing such a clause).

# Conclusion

- Fiduciary litigation is an ever changing field.
- The law expands and contracts depending on the mood of the Legislature and judiciary.
- The author hopes that this update provides assistance to financial institutions that choose to take on fiduciary duties.