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CLIENT ALERT: FIDUCIARY DUTIES IN ESTATE ADMINISTRATION

Highlighted by *In re Estate of Daniel K. Wallace*

At the end of last year, the Michigan Court of Appeals issued an opinion in the case of *In re Estate of Daniel K. Wallace*, noting the importance for a fiduciary to administer an estate and operate the estate's business interests in accordance with fiduciary obligations. The case highlighted the mistake that many fiduciaries, especially family members acting as fiduciaries, make in assuming that it is sufficient to invest in the same manner or operate a decedent's business the same way the decedent did.

Background of Case: Before his death in November 2011, Daniel owned several LLC business interests that he operated with his ex-wife, Tracy, and upon his passing those membership interests became assets of his estate. Daniel's estate plan consisted of a pour-over will and the Daniel C. Wallace Trust No.1. The will nominated Tracy as the personal representative (i.e., executor) of Daniel's estate, assigned all the tangible personal property to Tracy and poured the remainder of the estate into the Trust. The Trust in turn named Tracy as the recipient of the residual property and named the sons as the remaindermen.

For seven years after Daniel's passing, Tracy continued to manage the estate and operate the LLCs, until she was removed by the probate court for failing to pay creditors' claims. Attorney Byron P. Gallagher, Jr. was appointed in Tracy's place and ordered to complete a final accounting of the estate and pay the creditor's claims. Gallagher ended up filing a complaint on behalf of the estate and the LLCs, against Tracy for breach of fiduciary duties. Gallagher claimed, among other things, that Tracy failed to satisfy creditor claims, did not file income tax returns for the estate, commingled LLC funds with the assets of other LLCs, and used estate and LLC assets to pay her own personal expenses. Tracy did not rebuke any of the claims but instead countered that she did not owe the creditors or the LLCs any fiduciary duties and that she had merely continued to operate the business the way her late ex-husband had.

Ruling of the Michigan Court of Appeals: The probate court ruled that Tracy breached her fiduciary duty to the estate, which consisted of the LLCs as assets. On appeal, Tracy's argument was threefold: (1) she operated the LLCs in the same manner as Daniel had, (2) she did not owe a fiduciary duty to the LLCs or the creditors of the estate and (3) she did not owe a fiduciary duty to herself being a sole beneficiary of the estate.

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The appellate upheld the probate court ruling. The court only addressed the first two points of Tracy's argument, since the third part of the argument was not brought up during trial and could not be brought up on appeal.

The appellate court noted since an estate's personal representative is a fiduciary, the representative is under a duty to settle and distribute the estate's assets in accordance with the terms of the decedent's will, and as quickly and efficiently as is in best interest of the estate. And a personal representative's standard of care requires the representative to take care and prudence in actions, segregate the assets that are held in their fiduciary capacity from assets held in their individual assets. With respect to investments, personal representatives are expected to conform to the prudent investor rule, which requires the fiduciary to exercise reasonable care, skill, and caution. Since at Daniel's death, his membership interests in the LLCs became assets of the estate, Tracy, as the personal representative, was required to manage the LLCs in a fiduciary capacity. It was no longer sufficient for her to operate the LLCs in the same manner as she did before Daniel's death because she now had a greater standard of care to abide by. Tracy now had to meet the prudent investor rule in order to satisfy her fiduciary role as a personal representative. Under the prudent investment rule, the personal representative is required to pay claims allowed against the estate.

Takeaways: *In re Estate of Daniel K. Wallace* reminds us that becoming an executor of an estate, even if it is that of your wife or husband, is a very serious matter. It is very important to know what is required of you when acting in this capacity, especially when the estate is made up of business interests. Wiggin and Dana attorneys routinely serve as advisors to fiduciaries seeking input and guidance with regard to the administration of an estate and the operation of business interests owned by an estate. Please contact a Wiggin and Dana attorney if you have further questions on this case or if you are a fiduciary seeking guidance and they would be happy to help.

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