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THE SPOTLIGHT

BROUGHT TO YOU BY ROBINS KAPLAN LLP'S WEALTH PLANNING,
ADMINISTRATION, AND FIDUCIARY DISPUTES GROUP

Fiduciary Disputes of the Rich and Famous

WELCOME TO THE SPOTLIGHT

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The Spotlight strives to provide a forum to discuss the latest news and compelling issues impacting fiduciaries and those to whom fiduciaries owe duties. Whether you are an officer, director, trustee, beneficiary, trust officer, attorney, financial advisor, or anyone impacted by the law governing fiduciaries, we hope that you will find this newsletter interesting, informative, and perhaps at times even a bit entertaining.

Fiduciary disputes come in many varieties, but they share some consistent themes that involve the erosion of trust, high emotion, and opportunities—sometimes missed—for creative approaches to avoid or resolve litigation. As practitioners and teachers of fiduciary law, our attorneys have built a reputation for excellence in meeting the needs of individuals and organizations facing complex fiduciary issues, starting with the transactional and estate planning work that can mitigate risk from the beginning. We counsel individuals and business owners in a broad range of fiduciary issues, from estate planning and business succession, to dispute resolution and litigation when unavoidable.

Is there a topic affecting your practice that you would like us to discuss in an upcoming issue of The Spotlight? Let us know at all_marketing@robinskaplan.com.

– **Denise S. Rahne and Steven K. Orloff**

Lifestyles of the Rich and Famous: Fiduciary Responsibility in the Spotlight

BY B. TODD JONES

Wealth and celebrity provide no immunity from the burdens of fiduciary responsibility. The more complex an estate or financial portfolio, the greater the opportunity for fiduciary breaches—whether through elder exploitation, trust mismanagement, or abuse of power of attorney.

The legal and reputational consequences of fiduciary missteps can be devastating, as illustrated by a series of high-profile disputes involving some of the world's most well-known individuals. These cases reveal the complexity of fiduciary law and the importance of judicial oversight in protecting the interests of vulnerable parties.

Consider the case of Brooke Astor, a prominent New York philanthropist whose estate became the center of a sensational legal battle. Her son, Anthony D. Marshall, was convicted in 2009 of grand larceny and scheming to defraud his aging mother by altering her will and misappropriating assets. Adding to the scandal, JPMorgan Chase, a co-executor of the estate, settled civil claims with the New York Attorney General's Office for $7.5 million after being accused of failing to fulfill its fiduciary oversight responsibilities properly. This case underscored how fiduciary breaches can lead to criminal prosecution and substantial civil liability for institutional actors.

Stan Lee, the beloved creator of Marvel Comics, also became the subject of fiduciary controversy in his final years. Allegations of elder abuse and financial exploitation surrounded his business manager, Keya Morgan, who was eventually charged with false imprisonment and fiduciary abuse. Simultaneously, Lee's daughter, J.C. Lee, raised concerns over managing her father's trust and intellectual property rights. The clash over Lee's legacy exposed the unique challenges of celebrity estate planning, particularly where public image and licensing rights are central to the estate's value.

The legal drama surrounding media mogul Sumner Redstone further highlights how fiduciary disputes often intersect with questions of mental competency. Redstone's former companion, Manuela Herzer, filed a lawsuit alleging she had been unjustly removed from his trust and healthcare directive. Although the court upheld Redstone's ability to make changes, the litigation unveiled deep family and corporate divisions over control of his vast assets. The Redstone case exemplifies the role of fiduciary instruments in power struggles among insiders and heirs.

Even in death, the estates of public figures continue to invite scrutiny. Following Michael Jackson's passing in 2009, his estate was managed by co-executors John Branca and John McClain, as specified in his will. However, Jackson's family, including his mother and siblings, challenged their decisions about licensing agreements and financial transactions. While the courts ultimately sided with the executors, the dispute illustrates the long shadow fiduciary disagreements can cast over a celebrity's legacy.

Not all fiduciary battles involve human beneficiaries. Hotel magnate Leona Helmsley famously left $12 million in trust for her dog, Trouble, while excluding certain grandchildren from her estate plan. The Surrogate's Court in New York reduced the bequest to $2 million and reallocated other funds, citing concerns over fairness and public policy. Though unconventional, the Helmsley case highlights the court's role in ensuring fiduciary allocations align with legal standards and ethical considerations.

While fiduciary misconduct often leads to civil liability, certain trust administration failures may cross the threshold into criminal conduct, particularly where willful deception, misappropriation, or concealment is involved. Under federal law, statutes such as 18 U.S.C. § 1341 (mail fraud) and 18 U.S.C. § 1343 (wire fraud) provide broad prosecutorial authority when trustees use the mails or electronic communications to further a fraudulent scheme. For example, a trustee who sends falsified account statements to beneficiaries or uses email to conceal the unauthorized transfer of trust assets could be charged under these provisions. Similarly, 18 U.S.C. § 1344 (bank fraud) may be invoked where institutional trustees manipulate trust records or loan arrangements involving trust property.

Criminal liability may also arise under 18 U.S.C. § 664, which prohibits the embezzlement or theft from employee benefit plans and may be extended in cases involving misappropriation from retirement trusts. Trustees who commingle personal and fiduciary funds, redirect trust distributions to unauthorized recipients, or engage in self-dealing under the guise of fiduciary discretion may face charges of embezzlement or misapplication of fiduciary property under state penal codes or 18 U.S.C. § 1956 and § 1957 for money laundering and engaging in monetary transactions in property derived from specified unlawful activity.

Additionally, trustees who conspire with others—whether family members, financial advisors, or corporate insiders—to divert trust assets, inflate valuations, or falsify disclosures could be prosecuted under federal conspiracy laws (18 U.S.C. § 371) or face liability for aiding and abetting (18 U.S.C. § 2). Misrepresentations to probate courts, falsification of inventories, or fraudulent certifications in trust accountings could also trigger obstruction of justice charges or contempt proceedings.

In recent years, state attorneys general have increased their focus on crimes involving vulnerable populations, particularly elder financial abuse. Trustees overseeing special needs trusts or acting on behalf of incapacitated beneficiaries may face enhanced scrutiny if there is evidence that they took advantage of their fiduciary position for personal gain. In such cases, breach of fiduciary duty may form the basis for civil restitution and criminal exploitation charges under elder abuse statutes or financial exploitation laws found in most states' criminal codes.

In short, while most trust disputes remain in the civil realm, the potential for criminal prosecution is real, particularly where deception, abuse of vulnerable people, or willful concealment is present. Trustees must, therefore, regard fiduciary compliance not just as a matter of best practice but as a shield against both civil and criminal liability.

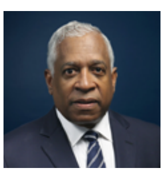
The Path Forward: Proactive Fiduciary Compliance and Internal Investigations

In light of these developments, financial institutions and individual fiduciaries must take proactive steps to assess and strengthen their trust administration practices. First, compliance officers and trust managers should implement regular internal audits to verify adherence to fiduciary principles, particularly the duties of prudence, loyalty, impartiality, and full disclosure. Delegation of functions, especially in the investment space, must be accompanied by documented due diligence, ongoing supervision, and meaningful performance review mechanisms.

Trust departments should establish formal protocols for finding and mitigating potential conflicts of interest, including rigorous review of related-party transactions, affiliated fund investments, and real estate dispositions. Where proprietary products are offered to trusts, beneficiaries should be informed, and alternatives should be documented as part of a transparent selection process. Fee structures must be reviewed for regulatory compliance and fairness in light of the trust's size, complexity, and purpose.

Institutions must treat any internal or external allegations of fiduciary misconduct as a trigger for immediate investigation. Even informal complaints from beneficiaries or co-fiduciaries should be escalated to compliance and legal personnel for independent assessment. Such investigations can prevent minor deficiencies from becoming reputational or legal crises when handled promptly. Institutions should also consider hiring outside counsel to conduct privileged reviews of trust operations where conflicts or irregularities are suspected.

The role of trustee is one of unwavering accountability. As courts continue to refine and enforce fiduciary standards, trust institutions must evolve their internal systems to ensure that they meet legal obligations and uphold the foundational principles of trust itself: good faith, loyalty, and the protection of beneficiary interests.



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Your Place or Mine?

How to Navigate Cross-Jurisdictional Fiduciary Litigation

BY TIM BILLION

Reality television fans are familiar with the trappings of the celebrity lifestyle: jet-setting from home to home, enjoying luxury retail, and traveling in private planes and yachts, all while posting it on social media. Even if a client is not living the "White Lotus" lifestyle, assets spread across jurisdictions—especially expensive or movable assets—can lead to thorny jurisdictional disputes. Often, a trustee owning or managing those assets can end up involved in litigation far from home.

Sometimes the causes are obvious and expected: A trust or estate may have expensive property scattered in several jurisdictions, or it may own a business that operates in multiple states. But sometimes trusts can be surprised by litigation in an unanticipated jurisdiction. If you receive a lawsuit out of the blue from an unfamiliar place, what should you do?

First and foremost, do not ignore it. Avoiding the problem will not make it go away—it will likely make it more difficult and expensive to resolve later.

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Figure out why you are receiving this document. Even if a trust does not have a presence in a particular state, lawsuits elsewhere can ensnare them, sometimes by complete surprise. For example, a beneficiary of a trust may have moved from one state to another—or even less predictably, a former spouse of a beneficiary may have moved to another state and then filed for divorce in the new state and asserted a claim against the beneficiary's assets. Or an asset owned by a trust has another owner located in a foreign jurisdiction who dies, embroiling the trust that owns the company in an estate dispute. Sometimes, even assets themselves can move from jurisdiction to jurisdiction—such as yachts or planes—and can trigger jurisdiction over those assets wherever they are located. The variations are endless but often share a common pattern: People elsewhere are fighting over money that is held by the trust, so the trust gets dragged into the fight, regardless of where it occurs. Commonly, the parties fighting will try to either initiate or move litigation to their preferred jurisdiction, so litigation may happen in multiple jurisdictions at once.

Once you figure out the connection to the foreign jurisdiction, a trustee and its counsel (including local counsel in the foreign jurisdiction) will need to weigh a number of strategic considerations. Most commonly, you will want to identify the significant differences in the laws that apply in your jurisdiction compared with the foreign jurisdiction. These differences can be essential—for example , a claim in one state might be barred by a statute of limitations in your state. In addition, a trust often has a significant interest in predictability and stability, both in terms of its governing law and its exposure to different jurisdictions. And while judicial decisions in one state often receive full faith and credit in any other state as a matter of comity, invoking another state's jurisdiction can expose the trust to continued jurisdiction of that state in other instances. Finally, the trustee should consult with a tax professional to determine if any potential adverse tax consequences exist.

After considering the strategic advantages and disadvantages of the foreign jurisdiction, if the trustee concludes it should challenge the exercise of jurisdiction over it, several options exist to address the issue. Of course, private negotiations can also resolve issues, depending on the dispute and the willingness of the other parties to negotiate or accept a compromise. If that is not possible, the trust will likely need to take some action in court to protect itself. One option is to bring a motion in the foreign jurisdiction to settle the governing law that applies to the dispute. This will most often happen where a choice of law clause exists but not a sufficient basis to challenge the jurisdiction of the foreign court.[1]

In some instances, a trust can affirmatively petition in its home state for instructions or guidance. For example, in South Dakota a trustee can bring a petition asking a court to resolve a question relevant to the administration of the trust. As a result, a trustee can petition a South Dakota court to confirm the application of South Dakota law to the trust or to confirm the exercise of jurisdiction in South Dakota. Such confirmations will not necessarily prevent a court in another state from simultaneously exercising jurisdiction over the trust, it can remove uncertainty in many situations.

Another option is to move to dismiss the foreign action for lack of personal jurisdiction over the trust or move to transfer the action to a more proper venue. These motions are fact-intensive but can result in either the outright dismissal of the trust from the action or a transfer of the action to the trust's home state.

Cross-jurisdictional litigation is often complex, and each case has its own strategic, legal, and factual considerations. Early intervention is important. If you suspect that you may wind up in cross-jurisdictional litigation, or you receive a summons or complaint, contact one of our experienced litigation attorneys.

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1 Jurisdiction refers to a court's power to hear a dispute in the first place. The governing law is the set of rules that the court applies when hearing the dispute. Courts in one state, or federal courts, often apply the laws of other states when hearing a case.

Avoiding a Tragic End

to a Fiduciary Relationship

BY DANIEL ALLENDER

Blockbuster movies follow varied plotlines—some tragic, some heartwarming, some a mix. Often they are based on human dramas. In the real world, fiduciary relationships can set the proverbial stage for unwelcomed high drama, particularly if the fiduciary does not give due consideration to if and how the fiduciary relationship reaches its denouement.

Fiduciary duties can be imposed by statute, contract, or the mere existence of any number of different types of relationships commonly recognized to rely on trust and confidence. Though clear fiduciary duties exist in many categories of relationships, sometimes whether the duty exists at all is murky. In fact, fiduciary duty can often come as a surprise, and it is often only discovered in litigation. Presented with the right circumstances, courts have imposed fiduciary in unexpected areas, such as between business associates who lack any formal partnership arrangement or between romantic partners, where financial, business, or property arrangements suggest an unusual expectation of trust and confidence.

Though the question of *whether* fiduciary duties exist can be uncertain, it is usually easy to pinpoint exactly *when* they arise. Traditionally, fiduciary duties begin with the formation of the relationship that imposes the duty: for example, a trustee's duties arise upon the trustee's appointment.

But when do fiduciary duties end? Even in relationships where the existence of the duty is easily spotted, it is not always clear when it terminates. The precise point a fiduciary's obligation to another party ends can bring its own litigation surprise—the type no fiduciary wishes to encounter.

The fiduciary duty of loyalty generally ends with the termination of the relationship that created it. For example, a business partner's fiduciary obligations to the partnership end with resignation from the partnership. But applying that general rule in practice can be difficult. While most business partners understand they owe the partnership a fiduciary duty while they remain partners, at dissolution, those obligations can be less obvious. Even if the partners have agreed upon a specific end date for their partnership, courts have held that partners still owe one another duties with respect to business opportunities arising after the agreed-upon end date but learned about prior to the partnership's conclusion. The partner may not be free to set aside the future opportunity for herself: She may be obligated to communicate its existence to her partners so they may equally benefit from it, even if that opportunity will not materialize until after the partnership's termination.

Similar duties apply to partners planning to depart an otherwise ongoing partnership. The announcement by itself does not terminate the duty of loyalty to the partnership. Rather, the partner owes continuing duties of loyalty until her partners formally withdraw. Until then, they may not compete against the partnership or withhold information about new opportunities, even for prospective opportunities that will only vest after the date set for the formal exit from the partnership.

In addition, certain fiduciary duties never expire, continuing beyond the end of the relationship that created them. The duty of confidentiality is a clear example. Attorneys, trustees, financial advisors, corporate directors and officers, and even real estate professionals have varying duties of confidentiality that persist after the formal relationship terminates. For example, courts have routinely held that former trustees may be held liable for breaching the fiduciary duty of confidentiality for disclosing private trust information after the trustee's resignation or replacement. Similarly, an attorney's duty of confidentiality is understood to be a lifetime commitment.

The ongoing duty of confidentiality can also impose itself in other ways. For example, a former corporate officer may not use secrets obtained from his former employer to launch a competing business after his resignation, if doing so would require abuse of confidential information protected by the former officer's ongoing fiduciary duties. While the officer's duty of loyalty generally ends with his resignation, courts have consistently held that a director or officer, even after resignation, remains prohibited from exploiting confidential information—such as trade secrets or proprietary business plans—acquired during their official tenure. Breach of this ongoing duty for either personal gain or to benefit a new venture can result in legal liability, including claims for injunctive relief or damages due to unjust enrichment, against both the official and his new venture or employer.

These ongoing duties are intended to ensure candor and trust in existing fiduciary relationships. They serve a critical public policy function. If fiduciaries could freely disclose or misuse confidential information after the end of the relationship, it would erode trust, discourage disclosure, and create incentives for self-dealing, both during the fiduciary relationship and after its run its course. By extending the duty beyond the termination of the relationship, the law ensures fiduciaries remain accountable for how they handle information gained in confidence, which helps preserve the integrity of the relationship that gave them rise.

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