

May 28, 2010

## T&E Litigation Update: *Pellegrini v. Breitenbach*

In *Pellegrini v. Breitenbach*, Case No. SJC-10458, 2010 Mass. LEXIS 293 (May 25, 2010), the Supreme Judicial Court declined to reform a will to create a charitable remainder annuity trust (CRAT) in order to minimize estate taxes and maximize distributions to the charitable beneficiaries of the will.

The decedent's lawyer, believing the decedent's assets to be modest, drafted a simple two-page will for the decedent. The lawyer explained that if he had known of the actual size of the decedent's estate, he would have drafted a more sophisticated estate plan that would have qualified as a CRAT. Evidence was also presented of the decedent's charitable intent.

While the Court acknowledged the various circumstances under which reformation of a trust instrument has been allowed, the Court declined to reform the decedent's will. The Court cited *Flannery v. McNamara*, 432 Mass. 665 (2000), where it was held that "[c]ourts have no power to reform wills." The Court also denied the requested reformation because, among other things, the request was not made until ten years after the decedent's death and thus was not timely.