June 9, 2011

T&E Litigation Update: *Hoffman v. University of Massachusetts Amherst*

In *Hoffman v. University of Massachusetts Amherst*, Case No. 10-P-1251, 2011 Mass. App. Unpub. LEXIS 731 (June 2, 2011), a decision issued pursuant to Rule 1:28, the Appeals Court affirmed an application for cy pres with respect to a charitable trust.

The trust provides for scholarships to boys of two particular Roman Catholic parishes to study forestry at Paul Smith's College or the University of Massachusetts Amherst. The trustee's application for cy pres to expand utilization of the trust was granted, with the consent of the Attorney General, and the Roman Catholic Bishop of Springfield subsequently filed a motion to intervene pursuant to Rule 24 and a motion for relief from the judgment pursuant to Rule 60(b)(6).

The Roman Catholic Bishop's motion to intervene was denied. The Court explained that it is the exclusive function of the Attorney General to correct abuses in the administration of a public charity by the institution of proper proceedings, and to protect the public interests by proceeding as those interests may require. A party other than the Attorney General would have standing only if that party has an individual interest in the charitable organization distinct from the general public. The Court held that although the Roman Catholic Bishop operates the two parishes in question, the Roman Catholic Bishop is not a legal beneficiary of the trust. The Catholic males from the two parishes in question who would study forestry at either Paul Smith's College or UMass Amherst are the legal beneficiaries. Therefore, the Roman Catholic Bishop lacked standing to intervene.

Even if the Roman Catholic Bishop were to have standing, it would not be entitled to relief from the judgment, because such relief would not be necessary to accomplish some "substantial justice." The exact nature of the cy pres relief granted by the trial court is difficult to discern from the summary decision, but it seems to have included an ability to benefit Catholic students from outside of the two parishes in question, if necessary. In any event, the Court held that the trial court did not abuse its discretion in granting this relief.

Finally, the Court held that the Roman Catholic Bishop was not entitled to receive notice of the cy pres proceedings because the applicable statute, G.L. c. 214, 108, requires that notice in a cy pres action be given only to heirs and other takers in default should the charitable gift fail. The Roman Catholic Bishop is neither.