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T&E Litigation Update: *Rivera v. Mackoul*

In *Rivera v. Mackoul*, Case No. 10-P-1663, 2012 Mass. App. Unpub. LEXIS 120 (Feb. 3, 2012), a decision issued pursuant to Rule 1:28, the Appeals Court affirmed a judgment in favor of an estate planning attorney for fees incurred in a will contest, where the will was determined to be invalid pursuant to an agreement for judgment. The executors and heirs of the estate claimed that the attorney's negligence in preparing the will led to the will contest.

The decision is largely devoid of facts, but the Appeals Court expressly relied on the decision in *Logotheti v. Gordon*, 414 Mass. 308 (1993), where the Supreme Judicial Court held that (1) the mere foreseeability of harm was insufficient to impose a duty owed to potential heirs by an attorney who drafted a will where the potential heirs would be disinherited by the will, (2) the attorney's duty in drafting the will was to the decedent as his client, and (3) the attorney owed no duty to the heirs, who only inherited by intestate succession, because imposing such a duty would create conflicts of interest. The Appeals Court noted that the law in this area is clear in Massachusetts, and further noted that cases in other jurisdictions reaching the opposite conclusion involved a commonality of interest among the testator and all the devisees that has been frustrated by the attorney's failure to achieve the agreed objective of the testator.