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T&E Litigation Update: *Cushman v. Folan*

In *Cushman v. Folan,* Case No. 09-P-894, 2010 Mass. App. Unpub. LEXIS 1135 (Oct. 19, 2010), a decision issued pursuant to Rule 1:28, the Appeals Court addressed the procedural question of whether an appeal of a fees award in probate court was properly dismissed with respect to one of the appellants ("Cushman") for her failure to post a bond to secure the judgment, as ordered by the probate court. The more interesting aspect of this case from our perspective, however, relates to the fees award itself.?? Cushman was one of a number of objectors/plaintiffs in a will contest that was consolidated with a related equity action. Although Cushman filed a motion for voluntary dismissal of her objections and for leave to withdraw on the day that trial began, and although the probate court allowed Cushman to withdraw, the court noted that Cushman might nevertheless be held liable for any fees that were later awarded. The remaining plaintiffs proceeded through trial and judgment was entered against them. They and Cushman were subsequently held jointly and severally liable for fees and costs totaling nearly $575,000 pursuant to G.L. c. 215, ? 45. Therefore, Cushman's last-minute withdrawal, after having participated in the litigation up until the beginning of trial, did not protect her from a fee-shifting award.?