January 28, 2011

T&E Litigation Update: *Bruner v. Bruner*

In *Bruner v. Bruner*, Case No. SJC-10653 (Jan. 27, 2011), the Supreme Judicial Court approved the reformation of a trust to conform with the settlor's intent.

The trust instrument provides that its assets are to be divided between two subtrusts: the "marital trust" for the benefit of the settlor's surviving spouse, and the "family trust" for the benefit of the remaining named beneficiaries and their issue. Unfortunately, because of a decline in the value of the assets since the settlor's death, there would have been nothing left for the family trust after the marital trust was funded pursuant to the formula in the trust instrument.

The trustees sought to reform the trust to allow the family trust to be funded first, with the remaining assets allocated to the marital trust. The trustees argued that this modification would be consistent with the settlor's intent to fund the family trust and to minimize the eventual taxes on her surviving spouse's estate by reducing the assets allocated to the marital trust. With the assent of all parties and a guardian ad litem, the Court ordered the requested reformation.

Interestingly, after oral argument, the Court asked the trustees to supplement the record with affidavits from the attorney who drafted the trust instrument and from the surviving spouse. These affidavits provided the Court with information regarding the settlor's estate planning goals that was missing from the record. The Court reminded parties in future cases to furnish "a full and proper record and the requisite degree of proof that they are entitled to the relief they seek."