August 29, 2011

T&E Litigation Update: *Sherman v. Shub*

In *Sherman v. Shub*, Case No. SUCV2007-BLS1, 2011 Mass. Super. LEXIS 146 (Suffolk Super. Ct. June 16, 2011), a Superior Court decision that was issued in June but just recently reported, the Court entered summary judgment against the plaintiffs on their Chapter 93A claim against the defendant insurance advisers and attorneys relating to allegedly defective estate plans.

The plaintiffs purchased two life insurance policies that were to become assets of two irrevocable life insurance trusts. Some time later, the plaintiffs discovered defects in the trust instruments and related documents that could result in increased estate and gift tax liability in the future. The plaintiffs brought the Chapter 93A claim against the defendants for this potential liability.

The Court granted the defendants' motion for summary judgment, holding that the plaintiffs' alleged damages are too speculative to be actionable. The Court adopted the defendants' argument that estate and gift taxes are subject to calculation only at the time of death, and that this calculation is subject to a number of variables (e.g., the value of the decedent's estate; the nature and amount of any deductions, credits and exemptions that may be available in the estate; the state or jurisdiction in which the estate is located; the applicable federal and state estate tax laws in force at the time; the decedent's marital status; and the identity of the beneficiaries of the estate). As the Court explained, "[h]ere, even assuming that there are no changes in the [plaintiffs'] personal circumstances and the size of their estates at the time of their future deaths, the court can make no such assumptions with respect to the federal and state tax statutes that may be in effect. . . . [T]he court is not in a position to divine the future intent and/or actions of Congress or to make such a prognostication."