

August 10, 2010

## T&E Litigation Update: *Victor v. Massachusetts Executive Office of Health & Human Services* and *Carrison v. Smiddy*

In *Victor v. Massachusetts Executive Office of Health & Human Services*, Case No. 09-P-1361, 2010 Mass. App. Unpub. LEXIS 844 (July 21, 2010), a decision issued pursuant to Rule 1:28, the Appeals Court affirmed a denial of Medicaid benefits on the grounds that a family trust established by the plaintiff's husband is a Medicaid-qualifying trust.<sup>?</sup> For trusts created before August 11, 1993, a Medicaid qualifying-trust is defined as one created or funded by the individual or his or her spouse, other than by will.<sup>?</sup> Here, the court held that the family trust is a Medicaid-qualifying trust because, contrary to the plaintiff's argument, the trust was not funded solely through her husband's will.<sup>?</sup> The family trust was created independently of the will as an inter vivos trust.<sup>?</sup> Therefore, the assets of the family must be counted in determining the plaintiff's eligibility for Medicaid benefits. In *Carrison v. Smiddy*, Case No. 09-P-1718, 2010 Mass. App. Unpub. LEXIS 863 (July 22, 2010), another decision issued pursuant to Rule 1:28, the Appeals Court affirmed a decision dismissing claims against the defendant trustee of a family trust for breach of fiduciary duty by making distributions prior to the settlor's death, favoring one side of the family (the Smiddy side) over the other (the Carrison side).<sup>?</sup> Although these distributions were inconsistent with the settlor's intent to treat her children equally, the distributions were consistent with the settlor's intent to reduce the taxes on her estate.<sup>?</sup> "Given the large tax savings and relatively small net disparity in distributions to the families, we cannot conclude that the judge's finding that [the defendant] had not breached his fiduciary duty to [the settlor] or to the residual beneficiaries was clearly erroneous."