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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.? 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.? 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.? The family trust was created independently of the will as an inter vivos trust.? 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).? 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.? "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."