

Fiduciary Law Update July 2013

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TABLE OF CONTENTS

[Paul Minnich Wins \\$275,000 Verdict in Cumberland County Estate Case](#)
[Barley Snyder Attorneys Prevail in Litigation Involving Trust Interpretation](#)
[Barley Snyder Attorneys Obtain \\$1.7 Million Settlement](#)
[Successful Will Contest Defense Upheld on Appeal](#)
[Barley Snyder Tax Corner](#)
[Legislative Responses to the Vine Decision: Impact on Third Parties](#)

Paul Minnich Wins \$275,000 Verdict in Cumberland County Estate Case

Paul Minnich recently obtained a verdict of over \$275,000 in a trial held in Cumberland County. Paul represented the widow of an elderly gentleman who had allegedly gifted over \$275,000 to his girlfriend just a few weeks prior to his death. The couple had been married for over 50 years. Paul instituted suit on behalf of his client against both the estate of the late husband and his girlfriend. The case involved claims for conversion, breach of fiduciary duty, undue influence and constructive trust. Following a one day bench trial, the Court ruled in favor of the widow on all claims and entered judgments against both the estate and the girlfriend. No appeal of the verdict was taken.

[Back To Top](#)

Barley Snyder Attorneys Prevail in Litigation Involving Trust Interpretation

Jeff Lobach and Paul Minnich were recently involved in handling Orphans' Court litigation in York County Court of Common Pleas involving the interpretation of a trust provision. Jeff and Paul represented the local Boy Scout Council in a dispute over the intentions of a deceased gentleman who established a trust in 1964 regarding which entities would benefit from the trust's income based upon geographic restrictions set forth in the Deed of Trust. In addition to assisting with the development of the case strategy, Jeff Lobach also testified as a witness concerning the geographic restriction issues. Following a hearing, the local Boy Scout Council fully prevailed in its position and no appeal of the favorable ruling was taken.

[Back To Top](#)

Barley Snyder Attorneys Obtain \$1.7 Million Settlement

Mike Mixell and Paul Minnich, partners with Barley Snyder, recently handled a complex fiduciary case involving

misconduct by an individual who improperly utilized a power of attorney to misappropriate the assets of an elderly woman. The misuse of the power of attorney was not discovered until after the elderly woman's death.

Mike and Paul assembled a team of experts, including two handwriting experts and a forensic accountant, to build the case. By developing a strong factual and legal position, Mike and Paul were ultimately able to settle the case just prior to trial by recovering \$1.7 Million for the elderly woman's estate. The entire estate passed to local charities which were beneficiaries under the elderly woman's will. As a result of Mike and Paul's efforts in the case, they recently were granted admission to the Million Dollar Advocates Forum, an organization whose members consist of attorneys who have settled or tried to verdict cases in which a recovery has been obtained in excess of one million dollars.

[Back To Top](#)

Successful Will Contest Defense Upheld on Appeal

In a prior issue, we discussed a favorable trial ruling in the George Estate matter, where the firm successfully defended a will contest filed by the decedent's niece. The niece challenged the decedent's will, which left almost the entire estate to decedent's friend who was also an employee of the institution where the decedent did her banking. Following a trial, the York County Orphans Court upheld the decedent's will and dismissed the will contest. The niece filed an appeal to the Pennsylvania Superior Court alleging various errors by the trial court. The Pennsylvania Superior Court recently upheld the trial court's ruling in all respects. Paul Minnich handled the trial of the case and was assisted by his partner, Alex Snyder, in handling the appeal.

[Back To Top](#)

Barley Snyder Tax Corner

By: Brian R. Ott

On July 9, 2013, Governor Corbett signed Act 52 into law which eliminates inheritance tax imposed on the transfer of qualified family-owned business interests from a deceased individual to members of his or her family. Under Act 52, these transfers are exempt provided that the assets or real estate continue to be owned by one or more "qualified transferees" for a period of at least seven years after the transferor's death. This exemption applies to a transfer from any decedent dying after June 30, 2013.

In order to qualify as a "family-owned business interest," the business must have fewer than fifty full-time employees, it must have a net book value of less than five million dollars, and it must have been in existence for five years prior to the date of the decedent's death. The business must also be owned as a proprietorship, or as an entity wholly owned by the decedent or by the decedent and family members. Act 52 does not apply to entities for which their principle purpose is managing investments or income-producing assets. A "qualified transferee" is a decedent's spouse, lineal descendants, siblings (including the sibling's lineal descendants), and ancestors (including the ancestor's siblings).

This Act illustrates another effort by the Pennsylvania legislature to shield small businesses from the impact of the inheritance tax. Just last year, Pennsylvania enacted a similar law exempting the transfer of family farms from tax. Although each of these newly-created exemptions have fairly rigid requirements, they each represent important planning opportunities for individuals looking to transfer their family businesses to the next generation. The attorneys

of Barley Snyder's Personal Planning Group are helping clients determine whether they can incorporate these opportunities into their own succession plan.

Act 52 is a valuable piece of legislation and can have major impacts on family-owned businesses. We at Barley Snyder are helping clients determine whether Act 52 or Act 85 applies to their business and preparing clients on how to take advantage of new opportunities in tax and succession planning.

[Back To Top](#)

Legislative Responses to the Vine Decision: Impact on Third Parties

By: Nancy Mayer Hughes

When accepting a power of attorney that appears valid on its face, third parties traditionally have not verified the principal's capacity at the time of execution. As a result of the Pennsylvania Supreme Court's decision in *Vine v. Commonwealth State Employees' Retirement Board*, 9 A.3d 1150 (Pa. 2010), however, this practice may subject those third parties to liability. In response, the Pennsylvania Legislature has presented several bills that would, in effect, reverse the *Vine* decision, yet still impose new requirements on third parties.

In *Vine*, the husband of a severely disabled state employee presented the State Employees' Retirement System (SERS) with a power of attorney, allegedly executed by his wife. Subsequently, the husband made changes that negatively impacted his wife's retirement benefits. After their later divorce, the wife sought to correct those changes, but her claim was denied as her husband's decisions were deemed binding. In response, the Pennsylvania Supreme Court determined that SERS' actions were invalid because of the wife's incapacity.

The *Vine* decision implies that SERS had a duty to investigate the wife's capacity, therefore creating uncertainty for third parties seeking to accept a power of attorney that otherwise appears valid. The decision also can be viewed as destroying the purpose of a general durable power of attorney.

In its most recent legislative session, the Pennsylvania Legislature pursued several bills that would return the process to the status quo prior to the *Vine* decision. The most promising was Senate Bill 1092, which passed the Senate but fell short of House approval. Legislators have reintroduced Senate Bill 1092 as Senate Bill 620 in the current legislative session. Senate Bill 620 passed in the Senate in March and is currently awaiting approval in the House.

Senate Bill 620 would require a power of attorney to be executed before a notary. Further, in response to the poor choices made by the husband in *Vine*, a good faith requirement would be imposed on agents acting under the power of attorney. Importantly, Senate Bill 620 offers immunity to third parties that act in good faith when relying on a power of attorney. A third party would be able to seek the advice of counsel if it does doubt the power of attorney's authenticity. Finally, the bill would impose liability on third parties that refuse to comply with an agent's valid instructions.

In summary, third parties that are presented with powers of attorney must remain cognizant of the *Vine* decision and its evolving legislative response. We at Barley Snyder are tracking the reaction to *Vine* and advising clients on how best to comply with the decision and the anticipated legislative changes.

[Back To Top](#)