IF THE BENEFICIARY IS THE SOLE TRUSTEE, DO YOU HAVE A SPENDTHRIFT TRUST?

TEXAS v. RESTATEMENT THIRD, TRUSTS

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I. Introduction.

A. Asset protection has emerged as an increasingly important issue for our clients.

1. In our society we enjoy an unprecedented degree of prosperity and liberty. No child born in America is foreclosed from becoming President, and you do not even have to be born in America to make a fortune here. Volatile investments are readily accessible to a large share of our population, with significant amounts quickly made and quickly lost.

2. We live in a sophisticated and complex age where responsible parties freely engage in contracts involving extensions of credit on mutually agreeable terms and with a mutual awareness that the borrowers’ ability to perform is far from certain. Much unsecured lending is done with the expectation that the money will be repaid from future earnings, not from the proceeds of selling of existing assets. Both parties know when the credit is extended that the future earnings are by no means certain. Based on our own hard experience, many of us fear for our own financial safety. If we personally manage to avoid capsizing as we run the shoals of easy credit, we fear that our loved ones may not be so fortunate. Benefactors wish to benefit their loved ones, not their loved ones’ creditors.

3. The daily news regularly brings reports of a tort verdict with a damage claim for an amount of money that is truly beyond comprehension. Many of our clients have a well-founded concern that their normal and reasonable activities can give rise to ruinous tort liability at any time if fate proves to be cruel.

B. Financial embarrassment carries less and less social stigma.

1. We live in a society where personal bankruptcy is but a bump in the road of life, with minimal lasting social stigma.

   a. We view it much like divorce, regrettable, but not very important in judging a person’s character.

   b. This has become increasingly true over the last several years.

2. Texas is a state that has long been sympathetic to debtors, with laws that allow one to be “broke” without being destitute.
a. Compared to most states, Texas law provides generous exemptions for many classes of assets, including homesteads, life insurance, annuities, and pensions. We also recognize spendthrift trusts without limitation as long as they are not self-settled.

b. While it is true that all but one of Texas’s largest banks have failed or been acquired over the last twenty years, Texans have generally been able to find ample credit to maintain our economic growth.

C. The legal system has generally evolved to strike a balance between the reasonable expectations and interests of debtors and creditors.

1. “Fraudulent conveyance” law has evolved over hundreds of years to limit a debtor’s ability to thwart her creditors.

2. The bankruptcy system provides a system by which the claims of creditors are adjusted, assets are reallocated to those who can redeploy them profitably, and debtors are typically discharged from their liabilities.

3. To the extent that the legal system is found to be too favorable one way or the other, periodic adjustments are considered and made.

II. Spendthrift Trusts.

A. The law in the various states in this country regarding spendthrift trusts are far from uniform, although most states clearly permit some form of spendthrift trusts.

B. Some states have looked askance at the idea of spendthrift trusts.

1. In a 1963 Ohio Supreme Court case (which was overruled in 1991), the court held that spendthrift trusts were invalid in Ohio:

   It is elementary that, as to property or rights that are subject to execution, any claim by an individual owner thereof for exemption of part or all of such property or rights from claims of his creditors must be based upon constitutional or statutory provisions providing for such exemption. 22 American Jurisprudence, 5, Section 3. It would seem to follow that legislative authority would be necessary to give effect to the intention of the settlor of a trust that creditors of a beneficiary thereof should not reach the enforceable rights of such beneficiary.
To permit a donor to give property in trust so that the beneficiary can have a right to get such property or the income therefrom free of the rights of creditors of the beneficiary would enable such donor to exempt such property or the income therefrom from the claims of all creditors, either those of the donor or of the donee. Thus, even without statutory authorization, such donor would be enabled to provide an exemption form execution in addition to those exemptions form execution specifically provided for by statute. See 23 Ohio Jurisprudence (2d), 251 et seq., Exemptions, Section 19 to 37, inclusive, for listing of such statutory exemptions. In our opinion, an owner of property should not, without legislative authority, be permitted, by setting up a spendthrift trust, to exempt either such property or the income therefrom from the claims of creditors of a beneficiary who is entitled under such trust to such property or the income therefrom.


2. Finding a spendthrift clause in violation of “the honest policy of the law,” a Rhode Island court declared, “Certainly no man should have an estate to live on, but not an estate to pay his debts with. Certainly property available for the purposes of pleasure or profit should also be amenable to the demands of justice.” Tillinghast v. Bradford, 5 R.I. 205, 212 (1858).

C. Even in states that do not recognize spendthrift trusts, creditors can be readily thwarted.

1. A settlor can make the beneficiary’s interest defeasible upon attempted alienation. See, e.g., Farkas v. Farkas, 38 S.E.2d 924 (Ga. 1946); Garrison v. Garrison, 188 S.W.2d 644 (Mo. 1945).

2. A settlor can terminate a beneficiary’s interest if a creditor of the beneficiary attempts to reach the interest. See, e.g., Jacks v. Monterey County Trust & Savings Bank, 127 P.2d 532 (Calif. 1942).

3. A clause that provided that trust distributions should be made personally to each beneficiary and that if they were unable to receive and receipt for the payments the interests would pass to others was effective and applied to German beneficiaries who became incapable of receiving property. Security-First National Bank of Los Angeles v. Rogers, 330 P.2d 811 (1958).
D. Spendthrift trusts have long provided asset protection in states that have recognized them. In states that recognize spendthrift trusts, such trusts may well be the best form of asset protection.

1. There are few exceptions to the general rule that spendthrift trusts are immune to attacks by a beneficiary’s creditors.

2. When a trust is created, it is a matter of a few words to make it a spendthrift trust, so the cost is negligible.

3. There is no periodic cost imposed on a trust because it is a spendthrift trust.

4. In summary, domestic spendthrift protection can be provided inexpensively and with little, if any, disadvantage compared to those incurred with a non-spendthrift trust.

E. Spendthrift trusts are not absolute protection. For example:

1. Federal preemption means that claims of the United States are not limited by a spendthrift provision to the extent provided by federal law. See Restatement Third, Trusts § 59 Cmt. a(1).

2. State laws may also override spendthrift clauses. Id.

3. Dependents who have a claim for child support may be able to reach the interests of a beneficiary. See, e.g. TEX. FAMILY C. § 154.005.

F. Why do states that recognize spendthrift trusts do so?

1. Florida is typical of many states that have indicated that spendthrift trusts are defined to be those trusts that are created with a view of providing a fund for the maintenance of another, and at the same time securing it against his own improvidence or incapacity for self-protection.” Croom v. Ocala Plumbing & Electric Co., 57 So. 243, 244 (Fla. 1911).

2. Other states, including Texas, ground the validity of spendthrift clauses on the settlor’s intent.

“The inquiry, then is not whether the beneficiary was improvident, incapable or a spendthrift; but whether the donor’s or testator’s intention was to make the trust estate immune from liability for debts of the beneficiary and to prohibit its alienation by him during the term

G. Traditionally, a settlor has not been allowed to establish a spendthrift trust for his own benefit, even in jurisdictions in which spendthrift trusts are permitted.

1. Section 156 of the *Restatement (Second) of Trusts* (1959) provides as follows where the settlor is a beneficiary:

   (1) Where a person creates for his own benefit a trust with a provision restraining the voluntary or involuntary transfer of his interest, his transferee or creditors can reach his interest.

   (2) Where a person creates for his own benefit a trust for support or a discretionary trust, his transferee or creditors can reach the maximum amount which the trustee under the terms of the trust could pay to him or apply for his benefit.

2. Section 58(2) of the *Restatement Third, Trusts* provides, “A restraint on the voluntary and involuntary alienation of a beneficial interest retained by the settlor of a trust is invalid. *See also* Cmt e.

3. Professor Scott was clear in his view. “It is against public policy to permit a man to tie up his own property in such a way that he can still enjoy it but can prevent his creditors from reaching it.” *Scott on Trusts* § 156. In case that was not clear, Professor Scott repeated his point a page later. “It is against public policy to permit the owner of property to create for his own benefit an interest in that property that cannot be reached by his creditors.” *Id.*

4. Recently, Professor Robert T. Danforth has written an article in which he “considers the historical roots of this rule, examines its theoretical basis, and concludes that the rule is theoretically unsound.” Danforth, *Rethinking the Law of Creditors’ Rights in Trusts*, 53 Hastings L. J. 287, 289 (2002).

5. Texas has a statutory provision that follows the Restatement. *See* Tex. Trust C. § 112.035(d). The statutory provision was an addition made by the Texas Trust Code, but was viewed as a codification of existing case law. *See* Glass *v. Carpenter*, 330 S.W.2d 530 (Tex. Civ. App. – San Antonio 1959), *writ ref’d n.r.e.*; *Note, Trusts – Spendthrift Provisions – Validity of Restraints on Alienation Where Settlor is Beneficiary*, 14 SW. L.J. 552 (1960).
H. A beneficiary can be a settlor or partial settlor of the trust, negating the spendthrift clause. *See Restatement Third, Trusts* § 58 Cmt. f.

III. Only Valid Trusts are Spendthrift Trusts.

A. The trust has to be an active trust.

1. If the trust is “merely passive or inactive, there can be no spendthrift trust.” *Long v. Long*, 252 S.W.2d 235, 247 (Tex. Civ. App. – Texarkana 1952, *writ ref’d n.r.e.*), citing 69 C.J. 701 § 1826(b); 42 Tex. Jur. 706 § 92; 54 Am. Jur. 32 § 14.

2. Texas Trust Code § 112.032 Active and Passive Trusts; Statute of Uses

   (a) Except as provided by Subsection (b), title to real property held in trust vests directly in the beneficiary if the trustee has neither a power nor a duty related to the administration of the trust.

   (b) The title of a trustee in real property is not divested if the trustee’s title is not merely nominal but is subject to a power or duty in relation to the property.

B. The trust has merged.

1. Texas Trust Code § 112.034 Merger

   (a) If a settlor transfer both the legal title and all equitable interests in property to the same person or retains both the legal title and all equitable interests in property in himself as both the sole trustee and the sole beneficiary, a trust is not created and the transferee holds the property as his own. This subtitle does not invalidate a trust account validly created and in effect under Chapter XI, Texas Probate Code.

   (b) Except as provided by Subsection (c) of this section, a trust terminates if the legal title to trust property and all equitable interests in the trust become united in one person.

   (c) The title to trust property and all equitable interests in the trust property may not become united in a beneficiary, other than the settlor, whose interest is protected under a spendthrift trust, and in that case the court shall appoint a new trustee or cotrustee to administer the trust for the benefit of the beneficiary.
2. Avoiding application of the merger doctrine is not difficult for a capable drafter because the existence of a remainder in someone other than the trustee-beneficiary precludes application of the merger doctrine.

3. Some people still manage to run afoul of the merger doctrine.
   a. *In re Pugh*, 274 B.R. 883 (Ariz. 2002), is such a case.
   b. The case is not unusual in that Bankruptcy Court opinions all too often make a hash of the relevant facts and the applicable trust law.
   c. It appears that the trust contained a spendthrift clause and made the sole beneficiary of the trust the trustee of the trust; however, no distributions were to be made from the trust until the beneficiary named a co-trustee, who had to agree to any distributions of principal. Beneficiary named his sister as co-trustee, but did not tell her. Nonetheless, beneficiary made withdrawals from the trust bank account and spent the money without his sister’s knowledge.
   d. The Bankruptcy Court appears to have decided that the beneficiary was the sole trustee and that under Arizona law there was no spendthrift trust, so the bankruptcy trustee was allowed to include the trust assets in the bankruptcy estate.
   e. The Bankruptcy Court relied on *In re Kaplan*, 97 B.R. 572, 577 (9th Cir. BAP 1989) for the proposition that a “valid spendthrift trust cannot exist where the sole beneficiary is also the sole trustee.” That case is a merger case, but the court does not seem to really grasp that concept.

IV. Some States Provide Less Protection Than Others Via a Spendthrift Trust.

A. Under Illinois law, a spendthrift trust will fail if the beneficiary “has exclusive and effective dominion and control over trust corpus, distribution of the trust corpus and termination of the trust.” *Matter of Perkins*, 902 F.2d 1254, 1257 (7th Cir. 1990).

1. *In re McCoy*, 2002 U.S. Dist. LEXIS 13239 (N.D. Ill. 2002), the court ruled that the trustee-beneficiary’s interest was not protected by the spendthrift clause in trust established by his deceased wife.

2. The beneficiary had an interest in all the trust’s income. As trustee, he also had discretion as he determined to be “required or desirable” to pay principal for his health, maintenance and support, without considering the interests of
any other beneficiary. While it was clear that the trustee was the primary beneficiary of the trust, he could also distribute for health, education, maintenance and support to his wife’s descendants. His wife’s descendants were the remainder beneficiaries (with three of them each receiving 3/8ths of the trust).

3. The court held that the trustee “had unregulated dominion and control over the corpus of the” trust because that distribution standard was not tied to a specified standard of living. In other words, the distribution provision of the trust allowed the trustee to decide “that any particular sumptuous luxury or indulgence is required or desirable for his health maintenance or support.”

B. *In the Matter of Bierman*, 1998 Bankr. LEXIS 2012 (D. Neb. 2002) ruled that the assets of a spendthrift clause were included in the bankruptcy estate where the beneficiary had an unrestricted power of withdrawal. While there were no Nebraska Supreme Court rulings discussing the requirements for a valid spendthrift trust, the Bankruptcy Court held that a spendthrift clause is invalid if the beneficiary “can exercise dominion and control over the trust corpus.”


1. This state law appears to be premised on the view that spendthrift trusts are permitted because the beneficiary should not be trusted with outright ownership. Accordingly, these spendthrift trusts fail when the beneficiary exercises absolute dominion over trust property. *In re Lichstrahl*, 750 F.2d 1488, 1490 (11th Cir. 1985).

2. There is some confusion in the bankruptcy case law as to whether the facts would invoke the doctrine of merger. *See, e.g., Dollinger v. Bottom*, 176 B.R. 950 (N.D. Fla. 1994).

3. *In re May*, 83 B.R. 812 (M.D. Fla. 1988), found that a beneficiary had the right to annual payments of $8,000 annually. It then held that these distributions were not protected by the spendthrift clause because the beneficiary had “dominion and control” over the payments.

D. *In re Herzig*, 167 B.R. 707 (D. Mass. 1994) held that a spendthrift clause of a New York trust did not protect the assets of the trust because of the beneficiary’s power to receive the trust assets by (a) exercising his power to remove his brother as trustee and then (b) keeping his wife from serving as the successor trustee by taking up residence elsewhere so she would not qualify to serve as the successor trustee.
V. The Texas Spendthrift Statute.

A. Compare the above cases to the Texas spendthrift trust statute:

**Texas Trust Code § 112.035 Spendthrift Trusts**

(a) A settlor may provide in the terms of the trust that the interest of a beneficiary in the income or in the principal or in both may not be voluntarily or involuntarily transferred before payment or delivery of the interest to the beneficiary by the trustee.

(b) A declaration in a trust instrument that the interest of a beneficiary shall be held subject to a “spendthrift trust” is sufficient to restrain voluntary or involuntary alienation of the interest by a beneficiary to the maximum extent permitted by this subtitle.

(c) A trust containing terms authorized under Subsection (a) or (b) of this section may be referred to as a spendthrift trust.

(d) If the settlor is also a beneficiary of the trust, a provision restraining the voluntary or involuntary transfer of his beneficial interest does not prevent his creditors from satisfying claims from his interest in the trust estate.

(e) A beneficiary of the trust may not be considered a settlor merely because of a lapse, waiver, or release of the beneficiary’s right to withdraw a part of the trust property if the value of the property that could have been withdrawn by exercising the right of withdrawal in any calendar year does not exceed at the time of the lapse, waiver, or release the greater of the amount specified in:

1. Section 2041(b)(2) or 2514(e), Internal Revenue Code of 1986; or

2. Section 2053(b), Internal Revenue Code of 1986.

B. Note that the Texas statute has no exceptions for the beneficiary exercising dominion and control over the trust.

C. Comment b to *Restatement Third, Trusts* § 58 is an exception to the general rule of the validity of spendthrift clauses. Comment b(1) provides:
An intended spendthrift restraint is also invalid with respect to a nonsettlor’s interest in trust property over which the beneficiary has the equivalent of ownership, entitling the beneficiary to demand immediate distribution of the property. Thus, if an income beneficiary also holds a presently exercisable general power of appointment (that it is a power currently to compel distribution of trust property to the power holder), a spendthrift restraint will not prevent the beneficiary’s creditors or transferees from reaching the property that is subject to the power. (A general power exercisable only at death does not give a nonsettlor sole life beneficiary the equivalent of ownership for this purpose. Compare, however, § 56, Comment b.)

D. Powers of withdrawal that are then exercisable render the spendthrift provision ineffective as to that beneficiary and the trust property over which the power of withdrawal can then be exercised. See Restatement Third, Trusts § 58 Ill. 2.

E. Query – what are the advantages and disadvantages of: (i) giving distribution authority to the trustee; (ii) giving a beneficiary a power of withdrawal; (iii) giving the beneficiary a general power of appointment?

F. Query – If the current beneficiary of a trust is not the settlor but is the trustee authorized to make distributions in her fiduciary capacity to herself as beneficiary in her sole discretion, will a spendthrift clause protect the trust from her creditors’ claims?

VI. The U.S. Bankruptcy Court is not bound by state jurisdictional limitations and the Bankruptcy Code preempts conflicting state law.

A. The first question is whether the beneficial interest in the trust is part of the assets available in bankruptcy for the beneficiary’s creditors.

1. The bankruptcy estate of a debtor generally consists of “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541(a)(1).

2. Debtors are required to disclose on Schedule B of the Debtor’s Voluntary Bankruptcy Schedules “[e]quitable or future interest, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in the Schedule of Real Property,” so it would be bankruptcy fraud not to disclose the existence of an asset protection trust. Additionally, the Statement of Financial Affairs required for both Chapters 7 and 13 includes mandatory disclosures of transfers of any property within the twelve months
preceding the filing of the bankruptcy. However, the bankruptcy trustee often will not limit themselves to inquiring of transfers within the twelve months preceding filing, but based on the Texas common law fraudulent transfer period, will often inquire as far back as four years prior to the filing of the bankruptcy.

3. The relevant exception, for our purposes, is that a “restriction on the transfer of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under” the Bankruptcy Code. 11 U.S.C. § 541(c)(2). The U.S. Supreme Court has held that “applicable nonbankruptcy law” includes, but is not limited to, state spendthrift trust laws. Patterson v. Shumate, 112 S.Ct. 2242 (1992).

4. A bankruptcy trustee cannot assert a claim to the corpus of a spendthrift trust because it is not the property of the bankruptcy estate. It follows logically that a corpus distribution from a spendthrift trust should also be excluded from property of the bankruptcy estate. In re. Coumbe, 304 B.R. 378 (9th Cir. BAP 2003). On the other hand, a majority of courts have held that an income distribution from a testamentary spendthrift trust constitutes a “bequest” and therefore income paid within six months of the bankruptcy filing is included in the bankruptcy estate. Id. Note that this rule only extends to testamentary trusts, not inter vivos trusts, based on the bankruptcy statute being limited to “bequests.” Id.

5. Bankruptcy law has its own fraudulent conveyance type provisions. Under these provisions, the trustee in bankruptcy can argue that certain transfers should be set aside. While a discussion of these provisions is beyond the scope of this outline, the factors are generally similar to the factors that are considered in applying the state law fraudulent conveyance rules.

6. Note that the bankruptcy trustee, in Chapter 7 proceedings under the Bankruptcy Code are private parties, hired by the U.S. Trustee, and are paid a percentage of the assets distributed to the creditors of the bankruptcy estate. The bankruptcy trustee can also hire lawyers from her own firm to litigate claims in the bankruptcy. Accordingly, this is a litigant who has a personal pecuniary interest, if enough money is at issue, in establishing that the assets of the trust are a part of the bankruptcy estate.

7. Similarly, a trustee in a chapter 13 bankruptcy can object to confirmation of a plan of reorganization due to the nonexempt nature of the asset for failure to either pay the value of that asset into the plan or a 100% dividend to the unsecured creditors, whichever is less.
8. Among the U.S. Trustee’s most potent weapons is the authority under § 727(a) of the Bankruptcy Code (11 U.S.C. § 727(a)) to deny a discharge in situations where the bankrupt is deemed to have engaged in “bankruptcy estate planning.” While different in context, this is somewhat akin to the concept of a tax sham or a transaction that is ignored for tax purposes because it lacks a “business purpose.”

9. To avoid the implications of the Bankruptcy Code, the settlor might decide not to file for personal bankruptcy and simply dodge her creditors. Note, however, that three creditors can put a person into involuntary bankruptcy, so the settlor would have to keep the number of creditors pursuing her to one or two.

VII. Spendthrift Clauses Aren’t the End of the Asset Protection Analysis.

A. Section 60 of the Restatement Third, Trusts sets forth the rule regarding the transfer or attachment of discretionary interests.

1. “The rule [in § 60] does not apply if the beneficiary’s interest is subject to a valid spendthrift restraint under the rules of § 58 unless the situation falls within an exception under § 59.” Restatement Third, Trusts § 60 Cmt. a.

2. Generally “if the terms of the trust provide for a beneficiary to receive distributions in the trustee’s discretion, a transferee or creditor of the beneficiary is entitled to receive or attach any distributions the trustee makes or is required to make in the exercise of that discretion after the trustee has knowledge of the transfer or attachment.” Restatement Third, Trusts § 60.

3. “The amounts a creditor can reach may be limited to provide for the beneficiary’s needs (Comment c), or the amounts may be increased when the beneficiary either is the settlor (Comment f) or holds the discretionary power to determine his or her own distributions (Comment g).” Id.

B. A transferee or creditor of a trust beneficiary can only compel the trustee to make discretionary distributions to the extent the beneficiary could personally do so. Id. Cmt. e.

C. If the trustee of an irrevocable trust has discretionary authority to make wholly discretionary distributions to the settlor, creditors of the settlor can reach the maximum amount the trustee, in the proper exercise of fiduciary discretion, could pay or apply for the benefit of the settlor. Id. Cmt. f.
D. Where a beneficiary is trustee of a discretionary trust with authority to determine his or her own benefits, a rule similar to Comment f applies. *Id.* Cmt. g.

1. “The beneficiary’s rights and authority represent a limited form of ownership equivalence analogous to certain general powers under the rule of § 56, Comment b” (powers of revocation or appointment when a beneficiary’s interests is not protected by a spendthrift provision). *Id.* Cmt. g. “Thus, the rule of this Comment is similarly unaffected by a purported spendthrift restraint.”

2. “The special rule of this Comment also applies to the discretionary right of a beneficiary who is not a trustee but is given a power to demand trust distributions pursuant to an expressed or implied standard, whether or not the standard is an objective one (e.g., “support”). *Id.* Cmt. g.

3. “The rule does not apply, however, if the discretionary power is held jointly with another person who, in exercising the discretionary authority, has fiduciary duties to other beneficiaries of the trust.” *Id.* Cmt. g.

4. “[T]his rule does [not] apply on behalf of transferees of the beneficiary’s interest. . . .” *Id.* Cmt. g.

5. “The beneficiary may resign as trustee or otherwise release the discretionary power; but a creditor who has already attached the discretionary interest may nevertheless reach the same amount as if the beneficiary had continued to hold the power. The same result follows from a release of the power, or the discretionary interest, under circumstances that would constitute fraud of creditors in the case of other transfers. Unlike the release of a power that is the full equivalent of ownership, however, the release of a beneficiary’s discretionary power, or the prior failure to exercise the power for his or her own benefit, does not cause the beneficiary to become a partial settlor of the trust for purposes of Comment f or the rules of § 58, Comments e and f.” *Id.* Cmt. g.

E. Query – Given that trustee/beneficiaries with broad discretion are often the surviving spouse serving as trustee of, and with an interest in, a bypass trust, why should their creditors have greater rights than if the trust provided for mandatory distributions?

F. Query – Will Texas courts apply Comment g in view of the Texas spendthrift trust statute? Texas courts have not applied the “dominion and control” test as an exception to the spendthrift trust rules that a few other states’ courts have applied.

G. Has the *Restatement Third, Trusts* gone too far in favoring creditors on this point?
1. The Reporter’s Notes on this comment says that this comment has no counterpart in prior Restatements. The case law in support of this comment cited in the Reporter’s Notes is limited.

2. “In a variety of contexts, the Restatement (Third) of Trusts provides more protection to those asserting claims against the beneficiaries’ interests than such claims have under the Uniform Trust Code.” Newman, The Rights of Creditors of Beneficiaries Under the Uniform Trust Code: An Examination of the Compromise 69 TENV. L. REV. 771 (Summer 2002).

3. Reading between the lines, there is not much question but that the Reporter for the Restatement Third, Trusts supports the decision of the Mississippi Supreme Court in Sligh v. First National Bank of Holmes County, 704 So.2d 1020 (Miss. 1997), a holding that was legislatively reversed the next year. See Newman at 800 to 803.

H. Query – If the trust has sufficient contacts with another state, will the courts of that state apply Comment g to the trust?

I. Query – What kind of trustee succession provisions and release provisions should be included in trust documents?