

## *Legal and Accounting Trusts and Estates Engagements: There Be Dragons*



**By Joe Kingma**

Trusts and estates engagements typically involve complexity, conflicts, and lots of cash. Both lawyers and accountants have seen a ground swell of malpractice litigation arising from these engagements, and both the professionals and their insurers should be wise to the risks these engagements entail.

Professionals have a hard time saying no to their family and their clients, and people often turn to their lawyer or accountant relatives to help with trust and estate work. Conflicts begin at that moment when the professional is also a beneficiary. Unfortunately, they often start work with little expertise in the area. Thus, professionals sail off into a stormy trusts and estates sea which is seeded with land mines. Engagement letters, conflict waivers and proper planning are often left on the dock.

Even the sophisticated professional has great risk in trust and estates work. Tax laws are byzantine and constantly changing. Testators' desire to control their wealth for three or four generations creates very complex testamentary schemes. Large dollar amounts in play bring out the worst in families, and the common second spouse versus the children battle is a risk for the drafter and the executor.

The role of the professional can shift from: (1) tax planner; (2) drafter; (3) trustee; (4) executor; (5) advisor; (6) trial counselor; and even (7) beneficiary. Likewise, the plaintiff may be the client who had the trust or will drafted, a beneficiary, or the ultimate trustee or successor trustee.

The worst problem in trusts and estates malpractice claims is conflict of interest. Professionals have often worked with three or even four generations in varying roles and with varying degrees of success. When the family blows up into a big fight, the professional is in the middle. Too often he or she sides with the best long term business source but maintains relationships with other adverse family members. Plaintiffs' lawyers can go a long way on a betrayal theme under these circumstances, and punitive damages and returns of fees are only a couple of the elements of damages that arise.

Finally, there are often multiple professionals involved in a complex trusts and estate matter, and mistakes not infrequently arise when something falls through the cracks. Conflicts and cross claims between the professionals create more risk and complexity.

There is lots of money to be made as the Greatest Generation completes its transfer of wealth to subsequent generations. On the other hand, there is risk as well. Price your services and your product appropriately, and keep a weather eye out for monsters lurking on the horizon.