


THE YEAR IN REVIEW

The Top 10 Cases

Robert Clofine, CELA
York, PA



DiStefano Trust and Power of Attorney,
30 Fiduc. Rep. 2d 1 (O.C. Div. Phila.)

- Mom names first daughter as Agent under POA
- Second daughter hires lawyer and first POA is revoked and lawyer is named as agent and trustee to act on Mom's behalf
- First daughter brings action to set aside second POA and trust based on lack of capacity
- Court grants preliminary injunction and enjoins lawyer from taking any action under POA and irrevocable trust

Kosco v. Commonwealth,
987 A.2d 181 (Pa. Crmwth 2009)

- Mr. & Mrs. Kosco transfer their Seven Springs retirement home to an irrevocable trust and claim an exemption from realty transfer tax
- The only trust beneficiaries were the Koscos and their children.
- Revenue argues that the trust was a "business trust" rather than an "ordinary trust"
- Because the trust had all of the characteristics of a "business trust" the transfer to the trust was subject to realty transfer tax

Barnett v. United States
 W.D. PA 2009-2 U.S.T.C. ¶160,576 (2009)

- Agent under Power of Attorney makes 17 annual exclusion gifts shortly before death of principal
- Power of Attorney did not include authority to make gifts or limited gifts
- Gifts treated as revocable transfers and included in decedent's gross estate for federal estate tax purposes

Mallon Estate,
 29 Fiduc. Rep. 2d 464 (O.C. Div. Phila.)

- Mom's Will leaves estate to 2 children in equal shares
- Son files account as Executor and as Agent under Mom's POA
- Daughter objects to account because it does not show inter vivos gift of \$150,000 from Mom to son
- Despite the confidential relationship, gifts to son upheld

Weatherbee v. Richman,
 Third Circuit Court of Appeals
 No. 09-1399 (11/12/2009)

- After DRA, CS bought \$400,000 actuarially sound, irrevocable, nonassignable immediate annuity paying \$4,423.47/month
- DPW denied MA claiming that annuity was an available resource
- Third Circuit affirms District Court - annuity is not a resource; CS income is not available to IS and PA statute is preempted
- Non-precedential opinion

Estate of Slomski,
987 A2d. 141 (Pa. 2009)

- Agent under post-Act 39 POA makes gifts and changes beneficiary on principal's 401(k) and life insurance policy
- POA authorized agent to "engage in retirement plan transactions" but did not authorize gifts
- Was change of 401(k) beneficiary a gift or was it a permitted action under PEF Code 5603(q)?
- Superior Court is reversed and beneficiary change was permitted

Lancashire Hall Nursing Center v. DPW,
995 A.2d 540 (Pa. Cmwltth 2010)

- Husband enters nursing home and estranged wife's \$207,000 in assets are deemed available to husband
- Estranged wife is entitled to maximum CSRA and she purchases an immediate annuity with the excess resources
- Wife's annuity is not DRA-compliant because it does not name DPW as beneficiary
- Full purchase price of annuity considered an uncompensated transfer

Maloy v. DPW,
1575 C.D. 2009 (Pa. Cmwltth 3/23/2010)

- Dad is in NH on Medicaid
- Son is appointed as guardian and receives court approval to transfer 1/2 of Dad's house to himself and secure \$70,000 loan
- Son fails to notify DPW of house transfer and Dad therefore receives \$35,000 of improper benefits
- DPW is permitted to seek repayment from son and not just Dad's estate

**DiVitis Estate,
30 Fiduc. Rep. 2d 195 (O.C. Div. Montg.)**

- Daughter as POA for Mom closes \$170,000 in CDs that Mom had titled as ITF for grandkids
- Daughter files account as agent and executrix and grandkids object
- Court holds that agent under POA should not have changed the principal's estate plan by closing the ITF CDs
- Court imposes a constructive trust and directs agent to pay grandkids \$170,000

**Estate of Novosielski,
992 A.2d. 89 (Pa. 2010)**

- Alice makes Will leaving \$5,000 to Proch and residue to her siblings
- Proch is named Alice's agent under POA and he aids Alice in opening a \$500,000 Treasury Direct account in their joint names
- Proch claims joint account on Alice's death
- Supreme Court holds that Multiple Party Accounts Act applies and there is a presumptive right of survivorship
- Supreme Court reverses Superior Court and holds that survivorship presumption cannot be rebutted by contrary provisions in Will
