

**Risk Management****Beneficiaries Unhappy, But Slow to Sue**

While 83 percent of beneficiaries are unsatisfied with the administration of their trusts, according to a recent survey, only 34 percent of them have filed a lawsuit seeking damages or removal of their beneficiary. However, 63 percent of them say they are seriously considering suing. The survey of a population of mostly disgruntled beneficiaries was conducted by HEIRS, the Pennsylvania beneficiary rights organization.

HEIRS, established in 1991 by some 20 beneficiaries with trusts at Mellon Bank, now boasts a membership of more than 2,000 beneficiaries in some 22 states. The organization recently released the findings of its 2006 members survey.

The lengthy survey focused on perceived conflicts of interest, beneficiary complaints, and the beneficiary-trustee relationship. In addition these questions in these areas, HEIRS asked when beneficiaries first experienced problems in their relationship with fiduciaries. The time frame ranged from 1965 to 2006, with noticeable spikes between 1984 and 1988 and from 1995 and 2003.

Surprisingly, only 58 percent objected to conversion of common trust funds to proprietary mutual funds. The

remaining 42 percent were split between not objecting to conversions and being unsure.

Conflict of interest complaints tended to focus on investments and litigation, not transactions with affiliates, excluding conversions. Only 12 percent of beneficiaries objected to the purchase of insurance from bank-owned insurance agencies.

While beneficiary-trustee conflicts frequently turned on investment decisions, the primary complaint, according to the survey, was the trustee's failure to communicate the decision rather than the decision itself.

Some 43 percent complained about specific investment decisions, 58 percent about investment strategy, and 68 percent complained about their trustee's "refusal to document a rationale for a specific decision."

Not surprisingly, trust account fees ranked high among the complaints. HEIRS members tend to be beneficiaries of irrevocable trusts. Fee complaints included increasing fees with no associated enhancement in services or performance, charging for special or unusual services without first seeking beneficiary consent, and in general "failing" to negotiate fees with beneficiaries.

Though beneficiaries were unhappy with trustee fees, they had little issue with soft-dollar arrangements. Only 12 percent objected to securities transaction fees paid to brokers.

HEIRS intends to share survey findings, including specific complaints, with government regulators and state attorney generals: 76 percent of respondents had no objection. This reflects HEIRS' militant views. However, the organization appears to have somewhat tempered its view on trustees, but not on litigation against them.

In a 2001 interview, Stan Smith, HEIRS' executive director, took the position that there were no "good trustees." In 2006, Smith, in his cover letter to the survey, concludes that "many trustees shoulder their fiduciary burdens responsibly," but based on thousands of complaints, there is room for improvement.

Survey results, such as HEIRS', can be useful for trustees interested in reducing beneficiary complaints. Unfortunately, they also serve to aid class-action attorneys. In a special note to the HEIRS survey, the organization advises beneficiaries of current class-action conversion lawsuits and that it can assist them in serving as a lead plaintiff.  $\Delta$

**Trust Regulatory News**

**Publisher** Bernard Garbo

**Copy Editors** K.T. Higgins  
Keith Watson

**Production** Peter Gibson

**Circulation** Scott Miller

Trust Regulatory News is published monthly by A.M. Publishing. All correspondence should be sent to P.O. Box 1110, Chicago, IL 60690-1110. Annual subscription rate is \$445. To order, call 800-404-2116 or fax 800-404-9222 or e-mail requests to [circulation@trustupdates.com](mailto:circulation@trustupdates.com).

No part of this publication may be copied, photocopied, or duplicated in any form or by any means without the prior written consent of A.M. Publishing. No statement in this issue is offered as or should be construed as legal opinion or advice. ISSN #1068-4301.

Copyright © 1992–2007 by A.M. Publishing, Inc.