TRUST SITUS: STUDIES IN CONTESTED JURISDICTION[1]

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I. WHAT IS TRUST SITUS?

A. Multiple Meanings of Trust Situs.

1. What does situs mean? It can have multiple meanings, and indeed a trust can have different types of situs.

(a) For purposes of evaluating the situs of a trust, the primary elements are:

i. The terms of the trust

ii. The domicile of the settlor upon executing an inter vivos trust or upon death with respect to a testamentary trust;

iii. The location(s) of trust assets;

iv. The place(s) of administration;

v. The location(s) of the trustees;

vi. The domicile of the beneficiaries.

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(b) These elements, or some subset of these elements, play a role with respect to trust situs – and governing law.

(c) See the authors' Summer 2012 American College of Trust and Estate Council ("ACTEC") program materials entitled "Trust Adventures in Wonderland – From the Meadow and Through the Looking Glass; Situs and Governing Law," which included materials of Barry F. Spivey, "Trust Situs, Choice of Law, and the Uniform Trust Code," presented to the Fiduciary Litigation Committee of ACTEC in March 2012.

2. For practical purposes, there are four primary ways to view trust situs, putting aside – and sometimes notwithstanding – the situs specified in the trust document:

(a) Administrative situs;

(b) Locational situs;

(c) Tax situs; and

(d) Jurisdictional situs.

3. Many times a trust's jurisdictional situs, locational situs, administrative situs and tax situs are all in the same state.[3] Very tidy.

4. However, there are times when one or more of the administrative situs, locational situs, tax situs and/or jurisdictional situs may differ; in addition, it is possible for a trust to have a certain type of situs (such as tax or jurisdictional situs) in more than one state at the same time.

B. Administrative Situs.

1. Administrative situs refers to where the administration principally occurs. This is sometimes referred to as the "principal place of administration," especially in states that have adopted the Uniform Probate Code or Uniform Trust Code (discussed below). This is usually the most common definition of trust situs. The comment to UTC §108 (concerning designation of the principal place of administration) provides that "[l]ocating a trust's principal place of administration will ordinarily determine which court has primary if not exclusive jurisdiction over the trust. It may also be important for other matters, such as payment of state income tax or determining the jurisdiction whose laws will govern the trust."

[3] These materials do not address international trust situs and governing law. References to a "state" should be deemed to include the 50 states of the United States and the District of Columbia.

2. Additionally, the comment to UTC §108 provides that the principal place of administration of a trust is also important because it "will determine where the trustee and beneficiaries have consented to suit (Section 202), and the rules for locating venue within a particular state (Section 204). It may also be considered by a court in another jurisdiction in determining whether it has jurisdiction, and if so, whether it is a convenient forum."

C. Locational Situs.

1. Locational situs refers to where the assets are physically located.

2. Intangible property owned by a trust is usually deemed to be located in the place of the administrative situs of a trust, although the deemed state income tax situs of intangibles may be different, depending on applicable state law. See Restatement (Second) of Conflict Laws §§ 276 & 279.

3. In the case of real property owned by a trust, its situs for some purposes is obviously in the state where the real property is located, although the jurisdictional situs of the real property as a trust asset may be in a different state. See e.g., Trusteeship Created By the City of Sheridan, Colorado, 593 N.W.2d 702 (Minn. Ct. App. 1999) (discussed below); Restatement (Second) of Conflict of Laws §§ 276 & 279.

D. Tax Situs.

1. A trust's tax situs refers to where the trust is taxable for state fiduciary income tax purposes with respect to retained income and capital gains – that is, whether the trust is a resident or nonresident trust for state fiduciary income tax purposes.[4]

2. A trust can have the bad fortune of being a resident trust for income tax purposes in more than one state. By the same token, a trust can be a resident trust for income tax purposes of no state.

E. Jurisdictional Situs.

1. Jurisdictional situs refers to the state whose courts have jurisdiction to hear matters concerning the trust. Administrative, locational and/or tax situs play a role in determining jurisdictional situs. For example, a trust with a tax situs in State A may mean that State A has

[4] This outline does not address the consequences that impact a change of situs may have on the trust's taxability of retained income and capital gains for state income tax purposes.

jurisdictional situs over certain tax issues concerning the trust, but if the trust also has real property located in State B, State B will have jurisdiction over certain matters concerning the real property located in State B – and the trust itself may provide that State C has jurisdiction over matters concerning the trust, which may cause State C to have jurisdiction over some or all trust matters (but it may not be exclusive jurisdiction).

2. As discussed below, jurisdictional situs is non-exclusive, and therefore multiple states may be able to exert jurisdiction over the same trust with respect to the same issue(s).

3. However, and as discussed below, even though a court may have jurisdiction over a trust, it may decline to exercise jurisdiction if the court believes that another court is better positioned to exercise jurisdiction over the trust.

4. In an actual matter handled by the authors' law firm, a trust owned residential real estate (deceased settlor's former home) located in California, where settlor died, and provided that California had jurisdiction. There were also California beneficiaries. The trustee resided in Pennsylvania. The beneficiaries filed a petition in California seeking *inter alia* to have the court direct the sale of the real estate, to surcharge and remove the trustee and to terminate the trust by its terms. The trustee alleged that the California court did not have jurisdiction because the trustee resided in Pennsylvania and the trust administration was located in Pennsylvania; the California court agreed and dismissed the petition. The beneficiaries were then forced to petition the court in Pennsylvania, which exercised its jurisdiction.

II. HOW IS SITUS DETERMINED?

A. Uniform Probate Code

1. The Uniform Probate Code ("UPC") was first promulgated in 1969 and has been amended several times, most recently in 2010. *Seventeen states* have adopted some version of the UPC in some substantial form: Alaska, Arizona, Colorado, Hawaii, Idaho, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Jersey, New Mexico, North Dakota, South Carolina, South Dakota, and Utah. "Legislative Fact Sheet, Probate Code," http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Probate%20Code. However, almost all states have adopted portion of the UPC.

2. The UPC uses the phrase "principal place of administration" in lieu of "situs."

3. *Unspecified in Testamentary or Inter Vivos Trust*: If a trust does not specify the principal place of administration, the principal place of administration "is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence, if he has no such place of business. In the case of co-trustees, the principal place of administration . . . is (1) the usual place of business of the corporate trustee if there is but one corporate co-trustee, or (2) the usual place of business or residence of the individual trustee who is a professional fiduciary if there is but one such person and no corporate co-trustee, and otherwise (3) the usual place of business or residence of any of the co-trustees as agreed upon by them." UPC §7-101. Note that the UPC does not automatically designate the principal palace of administration of a testamentary trust in the state of the decedent's domicile.

4. *Specified in Testamentary or Inter Vivos Trust*: UPC §§ 7-101 and 7-305 provide that the trust may designate the trust's principal place of administration. The UPC does not require any minimum contacts with the jurisdiction designated as the principal place of administration.

5. UPC §7-101 imposes duty on the trustee(s) of the trust to register the trust in the court of the trust's principal place of administration. All trustees and beneficiaries are subject to the jurisdiction of the court in which the trust is registered. UPC §7-103. The procedure to register a trust is set forth in UPC §7-102. However, registration "is not in lieu of other bases of jurisdiction during or after registration." Comment to UPC §7-103.

6. Failing to register a trust subjects the trustee "to the personal jurisdiction of any Court in which the trust could have been registered." UPC §7-104. In addition, a trustee who fails to register within thirty days after the demand of a settlor or beneficiary to do so "is subject to removal and denial of compensation or to surcharge as the Court may direct. A provision in the terms of the trust purporting to excuse a trustee from the duty to register, or directing that the trust or trustees shall not be subject to the jurisdiction of the Court, is ineffective." Id.

B. Uniform Trust Code.

1. The Uniform Trust Code ("UTC") was completed by the Uniform Law Commissioners in 2000, and amended in 2001, 2003, 2004, 2005 and 2010. The goal of the UTC was to "provide States with precise, comprehensive, and easily accessible guidance on trust law questions. On issues on which States diverge or on which the law is unclear or unknown, the code will for the first time provide a uniform rule. The Code also contains a number of innovative provisions." UTC

PREFATORY NOTE. *Thirty-two jurisdictions* have adopted versions of the UTC: Alabama, Arizona, Arkansas, District of Columbia, Florida, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Utah, Vermont, Virginia, West Virginia, Wisconsin and Wyoming. As of 2016, Illinois introduced (but has not yet adopted) the UTC. "Legislative Fact Sheet, Trust Code," http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Trust%20Code. In state that have also adopted the UPC, such as Arizona, Florida, Michigan and South Carolina, the terms of the UTC usually trump the UPC terms.

2. Like the UPC, the UTC uses the phrase "principal place of administration" instead of referencing "situs."

3. *Unspecified in Testamentary or Inter Vivos Trust*: The UTC does not provide default provisions if the trust does not specify the principal place of administration. However, the comment to UTC §108 provides that a "trust's principal place of administration ordinarily will be the place where the trustee is located. Determining the principal place of administration becomes more difficult, however, when co-trustees are located in different states or when a single institutional trustee has trust operations in more than one state. In such cases, other factors may become relevant, including the place where the trust records are kept or trust assets held, or in the case of an institutional trustee, the place where the trust officer responsible for supervising the account is located." Like the UPC, the UTC does not automatically designate the principal place of administration of a testamentary trust in the state of the decedent's domicile.

4. *Specified in Testamentary or Inter Vivos Trust Instrument*: Whereas, as noted above, the UPC does not require that there be "minimum contacts" with the designated state in order for a specified situs in the governing instrument to be controlling., UTC §108(a) provides that, without "precluding other means for establishing a sufficient connection with the designated jurisdiction," the terms of a trust designating the principal place of administration of a trust are "valid and controlling" if:

   (a) a trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; or

   (b) all or part of the administration occurs in the designated jurisdiction.

III. WHAT HAPPENS WHEN JURISDICTION IS CONTESTED?

A. There are few reported cases that shed light in a meaningful and interesting fashion on how trust matters play out when more than one state legitimately has or may have jurisdiction over a trust, and the parties litigate over which state should exercise jurisdiction over the matters in dispute (that is, what is the proper forum).[5] For example, there is an interesting series of Florida cases, beginning with Henderson v. Usher, 160 So. 9 (Fla. 1935), which provides a microcosm of the evolution of how courts view or may view jurisdiction and forum/venue in such circumstances.

B. Forum/Venue. In Perry v. Agnew, 903 So.2d 376 (Fla. Dist. Ct. App. 2005), summarized below, which distinguishes Henderson, the court addressed the concept of venue. However, "venue" as used in these trust situs cases is not about which local court within a state is the proper venue. Instead, "venue" issues arise when more than one state has some form of jurisdiction over the trust, and the question is which state – which venue – is the most appropriate, or is even the most convenient and least "harmful." The word "forum" could also be used in place of venue in such cases.

C. Henderson v. Usher, 160 So. 9 (Fla. 1935).

1. In Henderson, decedent died a Florida resident, survived by his wife and a child from a prior marriage. Decedent had a power of appointment over an inter vivos trust created by his mother, who was a Florida resident at the time she executed the trust. For a time, the administrative situs of the mother's trust was in Florida. Pursuant to decedent's will, he exercised his power of appointment over his mother's inter vivos trust, appointing the income to his wife and the remainder to his child from a prior marriage. Decedent's widow (who moved from Florida to New York after decedent died) elected against husband's will under Florida law. A dispute arose as to whether, because of her election against decedent's will, decedent's wife was entitled to the income decedent appointed to her from his mother's trust. Trustees of the testamentary trust under decedent's will (who were also New York residents) filed a petition in Florida to determine what rights decedent's wife (and the other beneficiaries) had in decedent's mother's trust in light of the widow's election.

2. Decedent's wife filed a motion to quash the service of the petition on the basis that she was no longer a resident of Florida and the trust res, consisting of equities, was not within the jurisdiction of the Florida

[5] These materials do not address jurisdictional issues that appear in federal courts, such as conflicting jurisdiction between state and federal courts. For cases discussing those issues, see Johnson v. Hoffman (No. 1), 17 Fid. Rep.2d 15 (D. Md. 1996) (dismissing for lack of jurisdiction because Florida state court already retained jurisdiction over parties and assets); Johnson v. Hoffman (No. 2), 17 Fid. Rep. 2d 17 (E.D. Pa. 1996) (dismissing for lack of jurisdiction based on principle of comity).

court (that is, the locational situs of the assets of the trust was no longer in Florida). The trial court denied the motion, and decedent's wife appealed to the Florida Supreme Court.

3. The Florida Supreme Court affirmed dismissal of the motion. The court noted that, as to questions concerning decedent's estate and will, Florida retained jurisdiction: "The testator was a citizen and resident of Florida when the will was executed and when he died, [decedent's wife] was a citizen of Florida when the will was executed, the will was probated under Florida law, and has been brought into the courts of Florida to be construed. Since the interpretation of the will is the primary question with which we are confronted, we are impelled to hold that the rest is at least constructively in this state and that the Florida courts are empowered to advise the trustees how to proceed under it and what rights those effected [*sic*] have in it. For the immediate purpose of this suit the will is the res, and when that is voluntarily brought into the courts of Florida to be construed, the trust created by it is to all intents and purposes brought with it." Henderson, 160 So. at 10.

4. With respect to which jurisdiction was proper for decedent's mother's inter vivos trust, as appointed by decedent, the court determined that the jurisdictional situs remained in Florida even though the administrative situs may be in New York: "The rule is settled in this country that an inter vivos trust has its situs at the residence of the creator of the trust even though he subsequently removes to the state where the trustees and beneficiaries reside and dies there. This rule is not changed by reason of the fact that the trustee resides in another state, there being no duty imposed on him to remove the property to his state, or by reason of the fact that the trust property has been converted under a general authority in the trust instrument and removed to another state." Id. at 11. Accordingly, the Florida Supreme Court seemed to suggest that jurisdictional situs would always remain in Florida notwithstanding any administrative or locational situs change (presumably absent court approval releasing jurisdiction over the trust).

D. Saffan v. Saffan, 588 So.2d 684 (Fla. Dist. Ct. App. 1991).

1. In Saffan, settlor created an irrevocable trust while a resident of Florida. The trust provided that the trust would be "construed in accordance with the laws of the state of Florida[.]" Settlor first amended the trust in Florida while still a Florida resident, and then later executed another amendment while physically in Georgia. The second amendment removed two of settlor's children as beneficiaries of the trust, and also provided that the trust was to be "read and

interpreted in accordance with the Law of Florida of which state GRANTOR, is a legal resident."

2. The disinherited children brought an action in Florida contesting the validity of the trust. The beneficiaries and trustee filed a motion to dismiss the action for lack of jurisdiction because neither the beneficiaries nor the trustee resided in Florida. The trial court denied the motion, and the beneficiaries and trustee appealed.

3. On appeal, the Florida court of Appeals noted that the settlor was a Florida resident when he executed the trust, the administrative situs of the trust from inception until after settlor's death was in Florida (it is not clear from the case whether settlor died a Florida resident), and locational situs of the trust assets had been in Florida during settlor's lifetime. Relying on Henderson, the court held that jurisdiction remained in Florida.

4. Although a version of UPC §7-203 was enacted by Florida in 1974, more than 15 years before the Saffan decision, the court in Saffan did not engage in any comparative analysis of one possible jurisdiction versus another when a party objected to the jurisdiction of the Florida court, which UPC §7-203 seems to require.

E. Perry v. Agnew, 903 So.2d 376 (Fla. Dist. Ct. App. 2005).

1. In Perry, the beneficiaries (one of whom was a Florida resident) brought an action in Florida seeking to remove the trustee, who was an individual residing in Boston.[6] The trust provided that it was to be governed by Florida law (it is not clear from the case whether the settlor was a Florida resident when he executed the trust). The trustee moved to dismiss pursuant to Florida's version of UPC §7-203, arguing that the principal place of administration (administrative situs) was in Massachusetts, and therefore the proper forum was in Massachusetts. The trial court denied the trustee's motion, and the trustee appealed.

2. The beneficiaries argued that, pursuant to Henderson, Florida retained jurisdiction over the trust. However, the court of appeals noted that Henderson "was a case involving jurisdiction, not venue, and it predated [Florida's version of UPC §7-203] . . . . Therefore, Henderson does not control." Perry, 903 So.2d at 377. The court also noted that although the trust designated Florida as the governing law, such provision "does not designate Florida as the principal place of administration." Id.

[6] It is not clear from the opinion whether the trust was a testamentary or inter vivos trust, although it appears to be inter vivos.

3. Because the trust's principal place of administration (administrative situs) was in Massachusetts, the court of appeals reversed the trial court and remanded the matter to the trial court "to determine whether all interested parties could be bound by litigation in Massachusetts." Thus, the issue here was not whether Florida could exert jurisdiction over the trust – it appeared to say it could – but rather whether it *should* exercise jurisdiction given that another forum may be more appropriate.

4. For other cases discussing the application of UPC §7-203, especially in the context of Florida, see Meyer v. Meyer, 931 So. 2d 268 (Fla. Dist. Ct. App. 2006); Covenant Trust Co. v. Guardianship of Ihrman, 45 So. 3d 499 (Fla. Dist. Ct. App. 2010), *reh'g denied* (Nov. 3, 2010).

F. Lampe v. Hoyne, 652 So. 2d 424 (Fla. Dist. Ct. App. 1995).

1. In Lampe, a Florida couple created an inter vivos trust. After the wife died, her niece, a Kansas resident, became successor trustee. The husband subsequently remarried, but died six months later. The second wife filed a complaint against the successor trustee in a Florida court alleging breach of trust, unjust enrichment and for declaratory relief. The successor trustee filed a motion to quash and dismiss.

2. The second wife claimed that the court had jurisdiction over the successor trustee due to her substantial connection with the state. The successor trustee claimed that Florida did not have jurisdiction because Kansas was the principal place of administration, only two assets remained in Florida after she began serving as successor trustee (which were subsequently removed), and she only conducted two brokerage transactions in the Florida via telephone while she remained in Kansas. The trial court relied on Saffan v. Saffan (discussed above) in holding that Florida, as the situs of the trust, had jurisdiction. The successor trustee appealed.

3. The Florida District Court of Appeal reversed the trial court's decision because the necessary facts to establish jurisdiction under Saffan were not included in the complaint or in the successor trustee's affidavit: "Instead of asserting jurisdiction over [the successor trustee] because the trust situs was in Florida, the complaint alleged jurisdiction because of [the successor trustee's] substantial and not isolated activities within the state." Lampe, 652 So. 2d at 426. Due to this misstep, the court held that the second wife did not properly allege or prove that Florida had jurisdiction and remanded the case.

G. Abromats v. Abromats, Case 16-cv-60653-BLOOM/Valle, 2016 WL 4366480 (S.D. Fla., August 16, 2016).

1. In Abromats, settlor, while a resident of Broward County, Florida, executed an inter vivos trust with "Florida choice-of-law provisions," naming her son Clifford (a New York resident) as trustee and her sons Clifford and Philip (a Wyoming resident) as beneficiaries. Settlor, while still a resident of Broward County, executed subsequent amendments to the trust that benefited Philip, which Clifford alleged were the product of undue influence. Clifford filed in the Circuit Court of Broward County a pleading seeking approval of a trust accounting and to invalidate the subsequent trust amendments. Philip removed the matter to federal court in the Southern District of Florida based on diversity jurisdiction and then filed a motion to dismiss for lack of in rem and in personam jurisdiction. Prior to Clifford's filing in the Broward County, Philip filed an action in the Western District of New York against Clifford concerning the trust, making similar allegations against Clifford that Clifford made against Philip. The judge in New York ordered the matter transferred to the Southern District of Florida (it is not clear whether the transfer was made by motion or *sua sponte*).

2. With the matter then before the Southern District of Florida:

(a) With respect to in rem jurisdiction, Philip argued that because Clifford's domicile was in New York, that moved the place of administration to New York. The court noted that while settlor's domicile was not dispositive, neither was the fact that Clifford lived in New York. The court noted that the trust consisted of certain funds and securities in accounts that remained in Florida. In addition, Clifford maintained a Florida condominium, which he testified he maintained in part so that he could carry out his duties as trustee, and that he has relied on Florida professionals to advise him with respect to the administration of the trust. He also testified that the majority of the trust's records were located in Florida. In addition, the court noted that "under Florida law, a trustee must prescribe notice before transferring a trust's place of administration to a jurisdiction outside of Florida, which Clifford has never done."[7] Thus, the court concluded that the trust's principal place of administration was in Florida and therefore it had in rem jurisdiction over the dispute.

[7] Notice of a situs change is a requirement under UTC §108 and is retained by many states, including Pennsylvania (20 Pa. C.S. §7708), Florida (Fla. Stat. §736.108) and Arizona (A.R.S. § 14-10108).

(b) With respect to in personam jurisdiction, Florida, like UTC §202, provides that a court has personal jurisdiction over beneficiaries receiving distributions from a trust having its principal place of administration in Florida. For the reasons addressed above concerning in rem jurisdiction, the court had already concluded that the trust's principal place of administration was Florida. The court also undertook a Fourteenth Amendment due process test to determine whether personal jurisdiction was appropriate, and concluded that it was.[8] Accordingly, the court held that it had in personam jurisdiction and denied the motion to dismiss.

H. Bernstein v. Stiller, No. 09-659, 2013 WL 3305219 (E.D. Pa. June 27, 2013).

1. In Bernstein, the testator died a resident of Pennsylvania and created two separate trusts for her children under her will. At testator's death, the majority of her assets were in Maryland, and her will was probated there despite her domicile in Pennsylvania. The beneficiaries were residents of New York and New Jersey and the trustees were residents of Maryland, Georgia and Massachusetts.

2. The beneficiaries filed a petitions to compel accountings and to remove the trustees in the Court of Common Pleas of Philadelphia County, Orphans' Court Division. The trustees removed the matters to federal court in the Eastern District of Pennsylvania on the basis of diversity jurisdiction, and then filed a motion in the Eastern District to dismiss the matters for lack of personal jurisdiction due to insufficient contacts with the forum.

3. The trustees argued that the district court lacked both in rem and in personam jurisdiction. They claimed that the court lacked in rem jurisdiction because none of the trust property was in Pennsylvania, the originating accounts were held and administered outside of Pennsylvania, and the testator's Pennsylvania residency at death was insufficient to permit the court to exercise in rem jurisdiction. The trustees further argued that the court lacked specific in personam jurisdiction because the petitioners' claims did not stem from contacts with Pennsylvania and the testator's will was not probated or administered in Pennsylvania. Finally, the trustees argued that the court lacked general in personam jurisdiction because there were no "continuous and systematic contacts" between the trustees and the forum state.

4. The beneficiaries' argued that the court had in personam jurisdiction as a result of trustees' counsel declaring the trusts "resident trusts" on a

[8] This due process analysis is beyond the scope of this outline.

2006 Pennsylvania Fiduciary Income Tax Return. The beneficiaries claimed that such a declaration gave Pennsylvania courts in rem jurisdiction, and therefore pursuant to the Pennsylvania long arm statute, codified at 42 Pa. C.S. §5322(a)(7), that gave the court in personam jurisdiction over the trustees. In opposition, the trustees claimed that the term "resident trust" was a tax classification with no jurisdictional significance.

5. The court rejected the beneficiaries' argument, noting that they improperly relied on the Pennsylvania long arm statute because the statute only applies to those exercising powers under the authority of Pennsylvania. The trustees, however, were exercising their powers under the authority of Maryland, where the trusts were created, and therefore were not subject to Pennsylvania's long arm statute. The court then looked at the Pennsylvania tax statute's definition of "resident trust." Under the tax statute and relevant case law, there were "insufficient minimum connections to support Pennsylvania's taxation of the trust assets" and, therefore, insufficient minimum contacts for personal jurisdiction. Bernstein, 2013 WL 3305219, at *7. Lastly, the court claimed that "even if [it] were to accept that the trusts themselves are resident in Pennsylvania, the residency of the trust assets would still not be sufficient to give the Pennsylvania courts personal jurisdiction over [the trustees] in the absence of other minimum contacts between [the trustees] and the forum state." Id. Therefore, the court dismissed the case for lack of personal jurisdiction.

6. Although the beneficiaries relied solely on their "resident trust" argument, the court addressed additional arguments for Pennsylvania to exercise jurisdiction. The court noted that a prior trustee's residence in Pennsylvania while serving as trustee until his death did not establish sufficient contacts because he was not named as a party in this case and the court would still lack personal jurisdiction over the other respondents. The court also noted that the testator's residence in Pennsylvania at death was insufficient to give Pennsylvania jurisdiction over assets held elsewhere.

I. Trusteeship Created By the City of Sheridan, Colorado, 593 N.W.2d 702 (Minn. Ct. App. 1999).

1. In Sheridan, the city of Sheridan, Colorado, sold "certificates of participation" totaling $3,525,000 to construct a municipal building in Sheridan. After construction was complete, the municipal facility was placed in trust, and the trust leased the facility back to the city of Sheridan and distributed the income from the lease to the certificate shareholders. The trust stated that Colorado law governed. The trustee was a corporate trustee located in Minnesota, and the trust was

administered in Minnesota. In February 1996, Sheridan commenced eminent domain proceedings against the facility. The Ramsey County, Minnesota, District Court held that it had jurisdiction over the trust, approved the sale and discharged the trustee. The certificate holders appealed.

2. The Minnesota Court of Appeals held that Minnesota courts did have jurisdiction over the trust. In determining whether jurisdiction was appropriate, the court applied a seven-part test, considering "(1) the location of the trust property (the situs of the trust assets), (2) the domicile of the trust beneficiaries, (3) the domicile of the trustees, (4) the location of the trust administrator, (5) the extent to which the litigation has been resolved, (6) the applicable law, and (7) an analysis of *forum non conveniens* principles." (Emphasis in original.)

3. The court noted that because a majority of the trust's assets (the facility) and beneficiaries (the certificate holders) were in Colorado, factors 1 and 2 favored Colorado jurisdiction. However, the court then noted that all of the other factors in the seven-part test favored jurisdiction in Minnesota, as follows:

   (a) Factor (3) (the domicile of the trustees): The trustee was domiciled in Minnesota.

   (b) Factor (4) (the location of the trust administrator): The trust was administered in Minnesota.

   (c) Factor (5) (the extent to which litigation has been resolved): Prior litigation concerning the trust, unrelated to the eminent domain issue, had occurred in Minnesota.

   (d) Factor (6) (the applicable law): The trust stated that Colorado governing law applied, but it did not state that the situs was in Colorado, and it did not otherwise provide that Colorado courts had jurisdiction (exclusive or otherwise) to hear matters concerning the trust. In addition, the court noted that Colorado's version of UPC §7-203 would defer to Minnesota jurisdiction because the principal place of administration (administrative situs) was in Minnesota, and "the opposing certificate holders have not asserted that all appropriate parties will not be bound by the Minnesota court's orders. Nor have they demonstrated that exercise of jurisdiction by a Minnesota court seriously impairs the interests of justice."

   (e) Factor (7) (*forum non conveniens* principles): The court found that *forum non conveniens* principles did not apply because of

the "location in Minnesota of the trustee and the trust administrator's records[.]"

4. The court also noted that although the locational situs of the property was in Colorado, the administrative situs of the trust was Minnesota, and the case focused on issues relating to the administration of the trust and not the trust property itself. Therefore, action was properly brought in Minnesota: "The district court recognized the distinction between control over the trust and control over the land, and it followed the Restatement principles by retaining jurisdiction over the trust and ordering the trustee to oppose the city's eminent domain proceedings in Colorado courts. See Restatement (Second) of Conflict of Laws § 276 cmt. b ('A court of a state other than that of the [locational] situs may exercise jurisdiction if this does not unduly interfere with the control by the courts of the situs.'). The case before us is analogous to an action involving an accounting by a trustee, which allows a court to 'entertain the action if it has jurisdiction over the trustee, even though the trust property is land situated in another state.' [VA Austin Wakeman Scott & William Franklin Fratcher, The Law of Trusts §646, at 513 (4th ed. 1989)]."

J. Peterson v. Feldmann, 784 N.W.2d 493 (S.D. 2010).

1. In Peterson, Laurence and May Peterson, South Dakota residents, each executed a living trust (presumably revocable). Each placed their interest in a family farm in South Dakota in the trust, and each trust gave their son Milton the right to purchase the real property in the trust. Laurence died in 2001 a resident of South Dakota, and Milton exercised his right to purchase the real property in his father's trust.

2. Following Laurence's death, May moved to Missouri, where two of her daughters lived. One of the daughters took May to a Missouri attorney, who prepared a new will for her and an amendment to her trust. The amendment, *inter alia*, eliminated Milton's option to purchase the real property in trust, giving that right to three of her other children, removed Milton as trustee and added a no contest/*in terrorem* clause. May died in 2008 a resident of Missouri. At her death, the trust consisted of Missouri bank accounts and an interest in the South Dakota family farm. In 2009, Milton filed an action in South Dakota Circuit Court challenging the trust amendment on the grounds of undue influence. The South Dakota court dismissed the action, concluding that Missouri was the more appropriate forum, and Milton appealed to the South Dakota Supreme Court.

3. The South Dakota Supreme Court held that the Circuit Court did not abuse its discretion in finding Missouri the more convenient forum. The court noted that the first question was "whether there is an

adequate alternative forum available in which the dispute can be resolved." Because no party disputed that Missouri had jurisdiction to handle the undue influence claim, the court concluded that there was an appropriate alternative forum.

4. The court then had to consider whether the "private and public interest factors . . . outweigh the deference ordinarily attended to the plaintiff's choice of forum."

   (a) The private factors include the following: "[r]elative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive." The court concluded that the private factors favored Missouri as the appropriate forum, noting that May was a Missouri resident for the last four years of her life, the amendment was prepared by a Missouri attorney and most of the witnesses lived in Missouri. Although the real estate was located in South Dakota, the court noted that "the fact that the trust assets include the South Dakota farmland does not heavily favor South Dakota as a forum, because the specific property held by the trust has little bearing on the question of undue influence in the execution of the Amendment." (This concept that the issue is about the real estate as a trust asset, rather than a real estate issue, is similar to Trusteeship Created By the City of Sheridan, Colorado, 593 N.W.2d 702 (Minn. Ct. App. 1999) discussed above.)

   (b) The public factors include the following: "[t]he administrative difficulties flowing from court congestion; the 'local interest in having localized controversies decided at home'; the interest in having the trial . . . in a forum that is at home with the law that must govern the action; the avoidance of unnecessary problems in conflict of laws, or in the application of foreign law; and the unfairness of burdening citizens in an unrelated forum with jury duty." The court concluded that both South Dakota and Missouri "have an interest in the outcome of the litigation, and the case would not unduly burden either forum or present complex questions of choice laws." Accordingly, the public factors did not favor one jurisdiction over the other.

   (c) Based on the foregoing, the court concluded that while "some deference should be given to the forum choice by plaintiffs[,]" consideration of the factors (specifically the fact that Missouri was an appropriate available forum and the private factors

favored Missouri) "made Missouri an easier, more expeditious, and less expensive forum." Accordingly, the South Dakota Supreme Court affirmed the circuit court's dismissal of the action.

K. Marshall v. First Nat. Bank Alaska, 97 P.3d 830 (Alaska 2004).

1. In Marshall, two Alaska residents created a trust for their granddaughter, who was also an Alaska resident, naming First National Bank of Alaska as trustee. Settlors both died in 1997 (presumably in Alaska), and the granddaughter moved to Colorado in 1999. In 2001, the granddaughter asked First National to resign in favor of Morgan Stanley Dean Witter Trust (the main office of which was in Jersey City, New Jersey), but First National refused to resign. Following a hearing with a master, the Alaska probate court removed First National and replaced it with Morgan Stanley.

2. First National transferred all of the assets of the trust to Morgan Stanley, along with an accounting (it is not clear whether the accounting had not been filed with any court at that time, although it does not appear that it was). The granddaughter then filed a petition with the Alaska probate court seeking to surcharge First National for attorney's fees and "special trustee fees" paid to first National from the trust in connection with the substitution petition. Following a hearing with a master, the Alaska probate court denied the surcharge petition, and the granddaughter appealed.

3. On appeal to the Alaska Supreme Court, First National argued, *inter alia*, that Alaska should not have exercised jurisdiction over the surcharge request because, relying on Alaska's version of UPC §7-203, the administrative situs was no longer in Alaska. Presumably, First National made this argument because no court outside of Alaska could have obtained jurisdiction over First National as to this issue. The Alaska Supreme Court noted that Alaska's version of UPC §7-203 did not prevent the Alaska courts from considering the surcharge petition "because at all pertinent times (before the final accounting and final substitution order) the trust was situated and administered in Alaska and the former trustee's disputed services were performed here. That the savings clause of subsection .045(a)(2) [which states that Alaska must decline to exercise jurisdiction in the state where the trust was registered unless 'the interests of justice would be seriously impaired'] potentially extends Alaska jurisdiction to foreign trusts does, however, implicitly confirm that Alaska courts must have jurisdiction to consider a surcharge petition directed at an Alaska trust's former trustee which is still domiciled in Alaska." The court therefore concluded that Alaska courts had jurisdiction to consider the surcharge petition because the granddaughter "(and the trust, acting

through the successor trustee) could not have obtained jurisdiction over First National in any court outside Alaska. Depriving Alaska court of jurisdiction under these circumstances might allow the former trustee to avoid a claim for repayment." The Alaska Supreme Court then remanded the case to determine whether the fees claimed by First National were excessive.

L. Lewis v. Hanson, 128 A.2d 819 (Del. 1957), *aff'd sub nom*. Hanson v. Denckla, 357 U.S. 235 (1958).

1. In Lewis, a Pennsylvania resident created an inter vivos trust in Delaware and gave herself a power of appointment. Settlor named Wilmington Trust Company, a Delaware corporation, trustee and gave it "ordinary powers granted to a trustee." Lewis, 128 A.2d at 824. However, settlor specified three powers that required written consent from a designated trust advisor before execution: (1) selling trust assets, (2) investing proceeds of sale of trust property, and (3) participating in mergers of corporations whose securities were trust assets.

2. Settlor subsequently moved to Florida, where she resided until her death. While in Florida, settlor exercised her power of appointment by directing the trustee how to distribute the trust funds upon her death. Upon settlor's death, the trustee distributed funds pursuant to this power of appointment. However, the beneficiaries under settlor's will differed from those in her power of appointment.

3. Residuary beneficiaries under the will, who were also Florida residents, brought action in a Florida court for declaratory relief concerning the validity of the power of appointment. The parties were divided into two groups: (1) the "Lewis Group," which argued that the trust and settlor's exercised power of appointment were invalid and (2) the "Hanson Group," which argued the trust and settlor's exercised power of appointment were valid. The Florida court dismissed the action for lack of jurisdiction over the Delaware trustee because no trust assets were ever held or administered in Florida and the trustee never did business in Florida. Despite this dismissal, the court ruled on the issue for those parties subject to the court's jurisdiction, holding that the settlor's exercise of her power of appointment was testamentary. Because there were not two witnesses at the time of this testamentary exercise, the court ruled that the exercise was void. Therefore, the court held that distribution should be in accordance with the terms of the will.

4. Both groups of defendants appealed. The Lewis Group appealed the dismissal for lack of jurisdiction and the Hanson Group appealed the finding of invalidity. The Supreme Court of Florida affirmed the

finding of invalidity and found that the lower court erred in concluding it lacked jurisdiction over the nonresident defendants.

5. While this appeal was pending in Florida, the Lewis Group argued the jurisdictional issue in a Delaware court. However, before addressing the jurisdictional issue, the Delaware court addressed whether Delaware or Florida law applied in determining the validity of the trust and power of appointment. The court concluded that Delaware law governed this issue because Delaware was the place of administration and the trustee's domicile. Most importantly, the settlor intended for Delaware to be the situs of the trust, as evidenced by her signing the agreement in Delaware and delivering trust assets to a trustee doing business in Delaware.

6. The court then addressed whether the trust and power of appointment were valid under Delaware law. The Lewis Group argued that the settlor was the sole present interest remainderman, making her power of appointment an invalid testamentary disposition under Florida law. The court rejected this argument because the trust also created present interests in those beneficiaries named in the trust in case settlor failed to exercise her power of appointment. The Lewis Group further argued that the trust provisions invalidated the trust because the settlor retained substantial control over the assets by requiring the trustee to obtain the written consent of a designated trust advisor to exercise specified powers. The court also rejected this argument, equating the trust advisor to a co-trustee with the same fiduciary duties. Therefore, the Delaware court held that the settlor created a valid inter vivos trust, and therefore the trustee should have distributed trust assets in accordance with the terms of the power of appointment.

7. Next, the court addressed the effect of the adverse Florida judgment on the defendants' right to litigate in Delaware. The Delaware court denied full faith and credit over the personal liability of the Delaware trustee and the in rem judgment over Delaware assets. The Lewis Group argued that the Florida judgment precluded Delaware litigation under *res judicata* or collateral estoppel. The court held that *res judicata* did not apply because the two courts addressed different issues: the Delaware court addressed whether the trust and power of appointment were valid while the Florida court addressed which assets passed under the will. The court also found that collateral estoppel did not apply because the action fell within a recognized exception, which "exists when the second action is brought in a court having jurisdiction of the subject matter and parties to determine directly the issue decided only incidentally in the first action." The Lewis Group further argued that the Delaware trustee was bound to the Florida decision, and therefore estopped, because the trust beneficiaries are bound to it regardless of the trustee's absence in the Florida court. The court

rejected this argument, noting that the trustee's duty was to defend the trust. As such, the trustee was an indispensable party to a suit regarding trust property and was not estopped by the Florida judgment.

8. On certiorari, the United States Supreme Court addressed two issues: (1) whether the Supreme Court of Florida erred in holding that it had jurisdiction over non-resident defendants and (2) whether the Supreme Court of Delaware erred in refusing full faith and credit to the Florida decree.

9. In addressing the jurisdictional issue, the Court provided separate analyses for in rem jurisdiction and in personam jurisdiction. The Court found that Florida did not have in rem jurisdiction over the trust for several reasons, such as the parties' agreement that the trust assets were in Delaware. The Court specifically noted that Florida's authority over the probate and construction of the settlor-decedent's will and the settlor-decedent's Florida domicile were insufficient contacts to establish in rem jurisdiction. Furthermore, the Court expanded the well-established personal jurisdiction principle from Pennoyer v. Neff, 95 U.S. 714 , to in rem jurisdiction, holding that a court cannot "enter a judgment purporting to extinguish the interest of such a person in property over which the court has no jurisdiction." The Court also found insufficient contacts for in personam jurisdiction. The appellees relied on McGee v. International Life Ins. Co., 355 U.S. 220, which loosened the requirements for in personam jurisdiction due to increased interstate commerce. However, the Court distinguished this case by noting that the defendant trust company had no Florida office and didn't engage in Florida business, the trust assets were never held or administered in Florida, and there was no solicitation in Florida. The Court further noted that the settlor-decedent's execution of her power of appointment in Florida did not create a sufficient connection for in personam jurisdiction. In concluding its jurisdictional analysis, the Court reversed the Florida judgment for both the non-resident defendants and appellees, who were subject to Florida's jurisdiction, because the trustee was an indispensable party in such a proceeding. Therefore, the trustee's absence nullified the entire judgment.

10. The Supreme Court also held that Delaware had no obligation to give full faith and credit to a judgment that was invalid in the home state for due process violations, giving the same reasons for which it reversed the Florida judgment. The Court noted that it need not wait until the Florida court remanded the case to determine if the trustee was indispensable because the state court had previously ruled on that issue: "To withhold affirmance of a correct Delaware judgment until Florida has had time to rule on another question would be participating

in the litigation instead of adjudicating its outcome." Therefore, the Court affirmed the Delaware judgment.

11. In his dissenting opinion, Justice Black concluded that Florida had the power to adjudicate the effectiveness of the power of appointment exercised in Florida because there was a Florida domiciliary, Florida beneficiaries and the settlor-decedent's will was administered in Florida. Aside from the jurisdictional holding, Justice Black also concluded that the Court was unjustified in affirming the Delaware decision before allowing the Florida court to hear the case on remand.

12. In another dissenting opinion, Justice Douglas concluded that Florida had jurisdiction over the Delaware trustee because the trustee was the agent of the settlor-decedent, meaning that they both represented the same legal right. Therefore, the executrix properly stood in judgment for the trustee in a Florida court.

M. In re Peierls Family Testamentary Trusts, 77 A.3d 223 (Del. 2013).

1. In Peierls, three related testators created seven testamentary trusts for the benefit of the appellants. The facts regarding each testator's trusts are as follows:

(a) The first testator died a resident of New Jersey and created two testamentary trusts for the benefit of his two sons. Testator's two sons and a Delaware corporation were serving as trustees at the time of litigation. Testator's will did not include any choice of law provision regarding the trusts. Testator's sons claimed that "New Jersey has been the situs of the trusts and that New Jersey law has governed the administration of the trusts since their inception" (locational and administrative situs). Peierls, 77 A.3d at 225. A 2001 court order approving an intermediate accounting of the trusts from the Superior Court of New Jersey proved that that the trusts were subject to that court's jurisdiction (jurisdictional situs).

(b) The second testator died a resident of New York and created two testamentary trusts for the benefit of her two grandsons. One of testator's sons, another individual, and a New York corporation were the original trustees. Testator's will did not include any choice of law provision regarding the trusts. Testator's grandchildren claimed that New York was the original locational, administrative, and jurisdictional situs of the trust; however, a Texas Probate Court accepted jurisdiction over the trusts, moved their situs to Texas, and approved the removal of the New York corporation as trustee and appointment of a Texas corporation in its place. After

obtaining the Texas court's order, the testator's grandsons returned to the New York court and "obtained an order officially transferring the trusts' situs from New York to Texas and approving the new corporate trustee." Id. Subsequently, the Texas court "issued an order declaring that Texas law govern[ed] the administration of the trusts while New York law continue[d] to govern the validity and construction of the trusts." Id.

(c) The third testator was believed to have died a resident of Texas and created three trusts: two for the benefit of her husband and one for the benefit of her husband and children. The testator's will included a specific choice of law provision, declaring that "[u]nless the situs of any trust is changed, the laws of the State of Texas shall control the administration and validity of any trust." Id. at 226. Another section of the will declared Texas as the fixed situs of the trust, but that section included an exception: "[I]f the Trustee shall be or become a resident of or have principal place of business in a state other than Texas, the situs of the trust may be changed to the place of residence of an individual Trustee who is serving alone as sole Trustee or to the place of business of a corporate trustee if one is serving as sole or Co-Trustee." Id.

2. The beneficiaries of these seven trusts filed several petitions, which all amount to appointing a Delaware corporation as trustee and changing the locational, administrative, and jurisdictional situs of the trusts to Delaware. The Court of Chancery denied the petitions for various reasons, including lack of jurisdiction. The petitioners subsequently appealed to the Supreme Court of Delaware.

3. In determining if the lower court properly declined to exercise its jurisdiction and properly abstained from ruling on the petitions, the Supreme Court of Delaware first considered whether the Court of Chancery had jurisdiction over the trusts. The court clarified that all of petitioners' requests related to matters of administration and therefore was solely addressing "which courts have jurisdiction over administration of those Trusts." Id. at 227. The court relied on the Restatement (Second) of Conflict of Law in concluding that the Court of Chancery had jurisdiction over the trusts, noting that a court had jurisdiction to decide administrative issues relating to a trust when it has jurisdiction over the trustees. Because all trustees and interested parties consented to the court's jurisdiction, the Court of Chancery had jurisdiction over the trusts, at least for administrative issues.

4. The Supreme Court of Delaware then addressed whether the Court of Chancery should have exercised its jurisdiction to rule on the petitions,

noting that the court with "primary supervision" over the trusts should exercise jurisdiction over administrative issues. A court has primary supervision if "the trustee is required to render regular accountings in the court in which he has qualified." Id. at 228 (quoting Restatement (Second) of Conflict of Laws § 267 cmt. e). However, if the court where the trustee has qualified does not actively exercise jurisdiction over the administration of the trust, "then the court of the place of administration 'may exercise primary supervision'" (thus allowing the court in the trust's administrative situs to assume jurisdictional situs). Id. In determining this issue, the court addressed the trusts of each testator separately.

(a) The court concluded that the Court of Chancery acted properly in refusing to exercise jurisdiction over the first testator's trusts because New Jersey was the place of primary supervision. The beneficiaries argued that by approving the appointment of a Delaware corporation as a trustee, the New Jersey court provided for a change in the place of administration (administrative situs). The court rejected this argument, noting the many factors that prove New Jersey is the trusts' administrative situs, including the trusts' numerous interactions with that court through four accountings.

(b) The court concluded that that the Court of Chancery erred in not exercising its jurisdiction over the second testator's trusts; however, the court did not remand this issue because petitioners' likelihood of relief was minimal. Although petitioners obtained court orders confirming that Texas was trusts' situs, the court found that the trusts' contacts with Texas courts was limited to those necessary to obtain an official transfer of situs. Because Texas courts did not exercise active control over the trusts, no state's courts had primary supervision. Therefore, the Court of Chancery could have exercised its jurisdiction because it had personal jurisdiction over the trustees. Despite this conclusion, the court did not remand this issue because any claim for reformation of the trusts would be a matter of Texas law and petitioners did not set forth such arguments.

(c) The court affirmed the Court of Chancery's declination to exercise jurisdiction over the third testator's trusts because the petitioners failed to address them in their briefs and arguments.

N. Killilea Trust, 25 Pa. Fid. Rep. 2d 86 (O.C. Westm. 2004).

1. In Killilea Trust, the settlor created an inter vivos trust in Florida for which she served as initial trustee. The settlor, who resided in New Jersey for most of her life, subsequently resigned as trustee and appointed her brother, a New Jersey resident, trustee and her niece, a Pennsylvania resident, successor trustee. Settlor's brother served as trustee until his death and administered the trust using professional advisors from New Jersey. Settlor's brother predeceased settlor, leaving settlor's niece as trustee. Upon settlor's death, the trust assets were divided among her five nieces and nephews in unequal shares. At that point, the trustee filed a petition for summary administration of settlor's estate in Florida, which the court granted and ordered that the assets of settlor's estate be distributed to the trustee. The trustee, who was a Pennsylvania resident, continued to consult with professional advisors, such as attorneys and accountants, in New Jersey to manage the trust.

2. One of the beneficiaries, an Ohio resident, filed a petition for an accounting and appointment of a co-trustee in the Pennsylvania Court of Common Pleas of Westmoreland County, Orphans' Court Division. The trustee subsequently filed a motion to dismiss for improper situs, alleging that New Jersey was the proper situs.

3. In determining that the proper situs was New Jersey, the Orphans' Court identified the trust's contacts with New Jersey: records pertaining to the trust were held in New Jersey; over 90% of the trust assets were in New Jersey; four of the five beneficiaries, amounting to 80% of the trust's interest, had ties to New Jersey either through residence or retaining representatives there; and, most importantly, the settlor resided in New Jersey for most of her life and manifested her intent for New Jersey to be the trust situs by choosing a New Jersey resident, her brother, as the trustee.

4. The court further relied on the official comment to the Pennsylvania statute, 20 Pa. C.S. §724(b), which states that the UTC relies on the concept of principal place of administration, which is oftentimes not the trustee's resident state, to determine trust situs if it is not specified in the trust instrument. Because the trust had substantial contacts with New Jersey and the trustee had already begun a proceeding in New Jersey before the beneficiary filed this petition, the court concluded that the trust situs was New Jersey. Therefore, the court dismissed the petition for improper situs.

O. In re Henderson's Will, 123 A.2d 78 (N.J. Super. 1956).

1. In Henderson's Will, the testator died a resident of New Jersey and created a testamentary trust. All of the beneficiaries and remaindermen resided in California. The initial trustee was a New Jersey corporation; however, the New Jersey Superior Court later discharged the corporate trustee and appointed the beneficiaries as successor trustees.

2. The beneficiaries filed an application in New Jersey to transfer the trust from New Jersey to California, pursuant to N.J.S. 3A:23-1. The statute allowed a New Jersey county court to authorize, if in the interest of the beneficiaries, the transfer of New Jersey property in trust to the state where the beneficiaries reside if they are not New Jersey residents. In anticipation of the transfer, the beneficiaries applied and were appointed successor trustees in a California court.[9]

3. The court noted that the trust consisted of cash and securities, which require constant investment supervision. Because all of the trustees were in California, the court approved the transfer. However, the court noted that "since this is a testamentary of personalty, it is to be administered by the substituted trustees in accordance with the law of New Jersey." Henderson's Will, 123 A.2d at 79.

P. Rosenberg v. Bank of America, No. 05-02-01051-CV, 2003 WL 1823467 (Tx. Ct. App. April 8, 2003).

1. In Rosenberg, the testator created a testamentary trust in Virginia whose beneficiaries resided in Texas. The beneficiaries filed a petition in a Texas probate court seeking appointment of a Texas successor trustee with the ultimate goal of transferring the trust's corpus and place of administration (locational and administrative situs) to Texas. The Virginia trustee opposed the petition, and the Texas probate court denied the beneficiaries' request. **[**

2. On appeal in Texas, the beneficiaries maintained three issues: (1) the trial court erred in failing to properly apply Virginia law under the doctrine of comity and conflict of law principles, (2) the trial court weighed the trustee's interest over the beneficiaries' interests, and (3) the trial court's judgment was so against the evidence that it was clearly wrong and unjust.

[9] It is not clear whether the appointment of the successor trustees by the California court was contingent upon the New Jersey court's approval of the change of situs and jurisdiction to California.

3. The court only addressed the beneficiaries' first issue to resolve the appeal. In filing the petition, the beneficiaries relied on § 26-64 of the Virginia Code, which states that a nonresident beneficiary can compel a resident trustee to transfer an estate to a trustee in the state where the beneficiaries reside. The Virginia trustee claimed that a more specific Virginia statute, § 26-46.2 of the Virginia Code, controlled. That statute mandates that if a will that created a testamentary trust was probated in Virginia, the jurisdiction where the will was probated is "the exclusive jurisdiction for qualification of the trustee or trustees." Rosenberg, 2003 WL 1823467 at *2.

4. The court noted under conflict of law principles, when one statute is generally relevant and another is more specifically relevant, the latter governs. Because the trust at issue was a testamentary trust, § 26-46.2 controlled the issue. Therefore, the court held that "the Virginia courts have exclusive jurisdiction to determine the qualification of the trustee in this Virginia testamentary trust." Id. at *3.

IV. RELEVANT ARIZONA LAW[10]

A. Arizona's Fiduciary Income Tax Statutes.

1. Arizona imposes an income tax of up to 4.54% on the "Arizona taxable income" of trusts. A.R.S. §43-1011, -1301, -1311.

2. The "Arizona taxable income" for "resident trusts" is the taxable income computed according to the Internal Revenue Code and adjusted by the modifications in A.R.S. §43-1333. A.R.S. §43-1301.

3. The "Arizona taxable income" for "nonresident trusts" is the taxable income from sources within Arizona, computed according to the internal revenue code and adjusted by the modifications in A.R.S. §43-1333. A.R.S. §43-1301.

4. A trust is a "resident trust" if at least one fiduciary of the trust is a resident of Arizona. A.R.S. § 43-1301. A trust with a corporate fiduciary is a "resident trust" if the corporate fiduciary conducts the administration of the trust in Arizona. Id.

5. A "nonresident trust" is a trust that does not meet the definition of a "resident trust."

[10] The authors are not lucky enough to be Arizona attorneys. They took a stab at summarizing the relevant Arizona law here, but would appreciate any corrections that an Arizona attorney might have.

B. Arizona Statutes With Respect to Changing Situs.

1. Arizona permits a trustee to change of the situs of a trust, without court approval, by providing notice to the trust's qualified beneficiaries at least 60 days prior of the proposed transfer. A.R.S. §14-10108.

2. A qualified beneficiary is a beneficiary who, on the date in question, (a) is a distributee or permissible distributee of trust income or principal; (b) would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in part (a) terminated on that date; or (c) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date. A.R.S. §14-10103.

3. Arizona also permits "interested persons" to change the trust situs, without court approval, by entering into a nonjudicial settlement agreement. A.R.S. §14-10111.

4. An "interested person" is defined as including "any trustee, heir, devisee, child, spouse, creditor, beneficiary, person holding a power of appointment and other person who has a property right in or claim against a trust estate or the estate of a decedent, ward or protected person. Interested person also includes a person who has priority for appointment as personal representative and other fiduciaries representing interested persons. Interested person, as the term relates to particular persons, may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding." A.R.S. §14-1201.