

**Steve Leimberg's Estate Planning Email Newsletter - Archive Message #3175**

**Date:** 29-Jan-25

**From:** Steve Leimberg's Estate Planning Newsletter

**Subject:** Paul Hood & Mary Vandenack on In re Dille Family Trust: Whoa, Nelly! Maybe the Law of the State in Which a Trust is Formed Remains Relevant in Situs Changes and Decantings!

*“In re Dille Family Trust involves a lengthy dispute over the rights to the fictional world of Buck Rogers. This feud began in the late 1920's between the Dille and Nowlan families around the time of the creation of the character Buck Rogers over the rights to the fictional character. In this interim decision, the Pennsylvania Superior Court, Pennsylvania's general intermediate appellate court, affirmed a Court of Common Pleas of Lawrence County PA Orphans' Court decision that refused to recognize a change of trust situs that was made pursuant to the express terms of the trust instrument, where the effect of the situs change would effectively eviscerate and undercut the purposes of the Pennsylvania Uniform Trust Act and would have made court supervision impossible.”*

**Paul Hood** and **Mary Vandenack** provide members with commentary on [In re Dille Trust](#).

A native of Louisiana (and a double LSU Tiger), **Paul Hood** obtained his undergraduate and law degrees from Louisiana State University and an LL.M. in taxation from Georgetown University Law Center before settling down to practice tax and estate planning law in the New Orleans area. Paul has taught at the University of New Orleans, Northeastern University, The University of Toledo College of Law and Ohio Northern University Pettit College of Law. Paul has authored or co-authored nine books, including his most recent book, Yours, Mine & Ours: Estate Planning for People in Blended or Stepfamilies and hundreds of professional articles on estate and tax planning and business valuation. He can be contacted at paul@paulhoodservices.com.

**Mary E. Vandenack, J.D., ACTEC, CAP®, COLPM®**, is a partner at **DUGGAN BERTSCH, LLC** in Omaha, Nebraska. Mary is a highly regarded practitioner in the areas of tax, trusts and estates, private wealth planning, asset protection planning, executive compensation, business, business exit, and business succession planning, tax dispute resolution, and tax-exempt entities. Mary's practice serves businesses and business owners, executives, real estate developers and investors, health care providers, companies in the financial industry, and tax-exempt organizations. Mary is also an adjunct professor at Creighton University, where she teaches trusts and estates.

Here is their commentary:

## EXECUTIVE SUMMARY:

Mary E. Vandenack and Paul Hood report on this unreported Pennsylvania Superior Court decision, which involves a lengthy dispute, is but one of over ten interim Pennsylvania state court decisions (15 total decisions out of Pennsylvania federal district court, federal Bankruptcy Court and New York state courts) in a lengthy dispute over the rights to the fictional world of *Buck Rogers*. This feud began in the late 1920's between the Dille and Nowlan families around the time of the creation of the character *Buck Rogers* over the rights to the fictional character. In this interim decision, the Pennsylvania Superior Court, Pennsylvania's general intermediate appellate court, affirmed a Court of Common Pleas of Lawrence County PA Orphans' Court decision that refused to recognize a change of trust situs that was made pursuant to the express terms of the trust instrument, where the effect of the situs change would effectively eviscerate and undercut the purposes of the Pennsylvania Uniform Trust Act and would have made court supervision impossible.

## FACTS:

*[N.B. The below facts have been cobbled together by sifting through the 15 related reported decisions listed below-as no one opinion contained every piece of the puzzle.]*

***The Dille Trust is formed in 1979 and then amended in 1982; Robert Dies:*** On August 16, 1979, Robert and Virginia Dille settled the Dille Family Trust, as amended ("Dille Trust"), a revocable living trust in California for estate planning purposes. Dennis W. Fox ("Fox") was a California lawyer who represented Robert and Virginia in forming the Dille Trust. Robert and Virginia were the initial trustees of the Dille Trust, and their children, Lorraine and Robert, Jr. (collectively, "Beneficiaries"), are the sole principal beneficiaries of the Dille Trust.

The Orphan's Court noted that the terms of the Dille Trust provided that the Dille Trust was a California trust, and all of the terms and provisions therein were to be "interpreted" according to California law.

Robert and Virginia amended the Dille Trust on January 5, 1982 to conform to the then new QTIP rules and to provide that Fox was to be appointed as successor Trustee to serve after the next serving co-trustee. When settlor Robert died in 1983, Arthur Martin ("Arthur"), an attorney with an office in Chicago, Illinois, who had represented Robert and Virginia, became co-trustee with Virginia.

***Situs moved to Illinois:*** On February 1, 1989, the Beneficiaries and the co-trustees executed a document transferring the situs of the Dille Trust to Illinois. Virginia died on February 17, 2009. Upon Virginia's death, Arthur became the sole Trustee in 2009.

Paragraph 2.F of the Dille Trust pertains to changes to situs and provided as follows:

**2.F Trust Situs** *This Trust Agreement is a California contract and creates a California Trust, and all of the terms and provisions hereof shall be interpreted according to the laws of the State of California, except that a majority of the beneficiaries may transfer the trust situs to a more convenient jurisdiction.*

**The times and faces are changing:** As noted above, Arthur served first as Co-Trustee and then as sole trustee of the Dille Trust for 28 years.

In an e-mail sent on February 24, 2011, Arthur explained the steps necessary to appoint a successor trustee or to terminate the Dille Trust. Arthur pointed out that since the Beneficiaries had both reached the age of 35, the Beneficiaries had the authority to terminate the Dille Trust under the terms of the Dille Trust. Note that this correspondence was prior to his March 8, 2011 letter of resignation.

On March 8, 2011, Arthur sent a notice of his intent to resign as Trustee of the Dille Trust. Pursuant to the 1982 Amendment to the Dille Trust, Fox was to be appointed as successor Trustee upon Arthur's resignation. On May 4, 2011, Fox sent a notice of his resignation from the position of successor trustee of the Dille Trust. Fox never acted in his capacity as Trustee and took no official actions on behalf of the Dille Trust prior to tendering his resignation on May 4, 2011.

According to the 1982 amendment to the Dille Trust, upon Fox's ceasing to act in the capacity of trustee, the American Guaranty & Trust Company was to be appointed as the successor corporate trustee. On May 19, 2011, the American Guaranty & Trust Company declined to accept the position as successor Trustee to the Dille Trust. The Beneficiaries attempted to secure a different corporate Trustee, but they were unable to find a corporate trustee willing to accept the position.

The office of trustee of the Dille Trust was vacant, in as much as the terms of the Trust made no other provisions for the appointment of a successor Trustee other than a commercial trustee. Robert, Jr. had some prior business contact with an attorney, Daniel Herman ("Herman"); and Herman had a license from the Dille Trust for certain limited purposes. Because of that prior familiarity, Robert, Jr contacted Herman about him becoming the Trustee for the Dille Trust.

Herman is a partner with his wife, Louise, in the Pennsylvania law firm of Geer and Herman, P.C., with its sole office located in Lawrence County, Pennsylvania. Herman informed Robert, Jr. that while he did not want to become Trustee for the [DFT], his wife, Attorney Louise Geer ("Louise"), was willing to serve as Trustee.

For reasons that aren't altogether clear, the Beneficiaries chose not to terminate the Dille Trust, but decided to ask Louise to be the successor trustee of the Dille Trust. On June 6, 2011, the Beneficiaries signed documents appointing Louise as Trustee of the Dille Trust.

Prior to signing the document on June 6, 2011, each of the Beneficiaries were given the opportunity to have the document reviewed by independent counsel, and their personal attorneys voiced no objection to the document or method chosen to appoint Louise as Trustee.

Louise and the Beneficiaries all read the e-mail between Arthur and Robert, Jr. dated February 24, 2011, and followed the recommendations of Arthur as to the method of appointing Louise as a successor Trustee. At the time that the Beneficiaries signed the document to appoint Louise as Trustee of the Dille Trust, they had the complete and absolute authority to terminate the Trust, if they desired to do so. They were the only Beneficiaries of the Dille Trust.

### ***The Beneficiaries go to California courts:***

*Removal/Situs Changes Begin:* The Dille Trust provides a mechanism for the settlors of the trust, who are the Beneficiaries' late parents, to appoint individual or corporate trustees. The Dille Trust likewise provides that in the event of a vacancy in trusteeship, *"the trustee then acting, if any, and if not, then a majority of the beneficiaries shall appoint a successor corporate trustee by an instrument in writing. . . ."* The Dille Trust ***didn't provide a mechanism for the Beneficiaries to otherwise replace or appoint trustees*** after the death of their parents.

On August 26, 2018, ***despite a clear lack of authority in the Dille Trust to do so***, the Beneficiaries notified Louise that she was no longer the trustee of the Dille Trust ("Attempted Removal"), but ***the Beneficiaries did not ask a proper court to remove Louise as trustee*** of the Dille Trust.

On February 20, 2019, the Beneficiaries signed a document styled "Instrument Transferring Situs of Trust," in which they stated that they intended to transfer the situs of the Dille Trust back to California. That same date, the Beneficiaries also executed a document styled "Instrument Confirming Request for Mandatory Distribution and Removal of Entirety of Shares of Principal in Trust Estate of the Dille Family Trust," ("Attempted Distribution") which they claim removed all assets from the Dille Trust, effectively terminating the Dille Trust.

On April 4, 2019, the Beneficiaries filed an ex parte petition in the Superior Court of California, County of Los Angeles, seeking an order of court confirming that (1) Louise was not trustee of the Dille Trust; (2) all assets of the Dille Trust were removed on February 20, 2019 pursuant to the Attempted Distribution; (3) the Beneficiaries should be appointed as co-trustees of the Dille Trust [Query: which had nothing left in it if the assets were legally removed, right?]; and (4) Louise had to turn over all of the property of the Dille Trust to the Beneficiaries. Louise contested the ex parte petition by specially appearing and solely for the limited purpose of filing a motion to dismiss for lack of in personam and subject matter jurisdiction and improper venue.

Judge Clifford Klein of the Superior Court of California, Los Angeles County, ruled that California no longer had jurisdiction over the Dille Trust and that the principal place of the Dille Trust administration was Pennsylvania, and the court **dismissed** the Beneficiaries' petition for **lack of in personam jurisdiction and improper venue**, finding that the principal place of the Dille Trust's administration was Pennsylvania.

On July 11, 2019, the Beneficiaries signed **another** "Instrument Transferring Situs of Trust: Dille Family Trust" ("Second Situs Instrument"), transferring the situs of the Dille Trust back to California. They filed the "Second Situs Instrument" with the Superior Court of Los Angeles County, California, but the Beneficiaries did not request the Superior Court to bless the Second Situs Instrument. The Beneficiaries also did not seek a court order from the Orphans Court in Pennsylvania to change the situs of the Dille Trust back to California.

Fox, **still purporting to be trustee of the Dille Trust**, along with the Beneficiaries, filed a petition in the Superior Court of **San Mateo** County, California, asking the court to approve a **retroactive distribution** of all Dille Trust assets and to terminate the Dille Trust. Shockingly, this was filed **without any notice to Louise, the Nowlan Family Trust** (which had been permitted to intervene), or the **Orphans' Court in Lawrence County, Pennsylvania**.

Neither the Beneficiaries nor Fox **informed the San Mateo County court of the Los Angeles County order that found that California didn't have jurisdiction of the Dille Trust** and all recent administration of the Dille Trust had been conducted in Pennsylvania since 2011. Although the San Mateo County Court initially granted the petition, the court subsequently withdrew the order and dismissed the petition with prejudice **when it learned of the Los Angeles County order and pending Lawrence County case**.

**Attempted sale:** In her capacity as trustee of the Dille Trust, Louise executed a purchase agreement with the Buck Rogers Company and the **Nowlan Family Trust** selling any and all interests that the Dille Trust owned in the trademark and intellectual property rights in *Buck Rogers* for \$300,000.00. Louise also petitioned the Orphans' Court to show cause why (a) she was not the duly qualified and acting trustee of the Dille Trust; (b) Pennsylvania is not the situs of the Dille Trust; and (c) the proceeds from the purchase agreement should not be distributed to the Dille Trust.

**Back in the Orphan's Court:** The parties barraged the Orphan's Court with a blizzard of volleys and motions. This discussion is pieced together from the various 15 decisions, many of which are Pennsylvania state courts.

On October 2, 2020, in the Court of Common Pleas of Lawrence County, Pennsylvania, this court entered an order denying the Nowlan Family Trust's motion for partial summary judgment and the Beneficiaries' renewed motion for summary judgment and made an explicit finding that Lawrence County, Pennsylvania, had subject matter jurisdiction over

this matter. On October 8, 2020, this court entered an order of court denying the Nowlin Family Trust's motion to quash notice of no subject matter jurisdiction and for other relief and finding that the Court of Common Pleas of Lawrence County, Pennsylvania, has exclusive jurisdiction to determine the status of Louise as Trustee of the Dille Trust.

*Situs and governing law:* Because the Dille Trust's situs had been changed to Illinois on February 1, 1989, the Orphan's Court ruled that the laws of Illinois controlled the **administration** of the Dille Trust. Louise was appointed as trustee by the Beneficiaries on June 6, 2011. After Louise's purported appointment as trustee on June 6, 2011, the Orphan's Court ruled that the situs of the Dille Trust was in the Commonwealth of Pennsylvania, and the laws of Pennsylvania governed the **administration** of the Dille Trust.

However, the Orphan's Court concluded that the terms of the Dille Trust were to be interpreted according to **California** law. While the Orphan's Court had held that **California** law was to be used to interpret the **terms** of the Dille Trust, the terms of the Dille Trust with regard to the appointment of a successor trustee are not in dispute.

*The Successor Trustee Selection Process:* The Dille Trust set forth a series of successor Trustees. However, eventually, all of the named potential successors either were deceased or had declined or resigned appointment, and no corporate Trustee could be obtained following the resignation of Arthur on March 8, 2011 and Fox's resignation on May 4, 2011. Moreover, there were no provisions in the Dille Trust, as amended, that provided a method by which anybody but a proper court would be able to appoint any successor **individual** trustees following the resignations of all successor trustees named in the document when the office of trustee was vacant.

*The efforts of the fake trustee and the aftermath:* Through his attorney, Fox, who was a named successor trustee in the Dille Trust, **but who had resigned and never acted as trustee**, filed a *Præcipe to Discontinue Louise's action with the Orphans' Court*, purporting to be the trustee of the Dille Trust. The Orphans' Court ordered the prothonotary not to take action on the præcipe. The Beneficiaries filed a "*Notice of No Subject Matter Jurisdiction*" with the Orphans' Court, and they attached their filing with the Superior Court of Los Angeles County, California. The Orphans' Court entered an order declaring the Beneficiaries' notice to be a nullity.

Louise filed a motion requesting the court strike or nullify the Beneficiaries' situs filing in California and to enjoin Fox from holding himself out as trustee of the Dille Trust. The court deferred its ruling on this motion until its final decision on whether Louise was lawfully appointed trustee and remained trustee after the Attempted Removal from the Beneficiaries that they removed Louise as trustee.

The Orphan's Court further enjoined and prohibited Fox and the Beneficiaries from representing or holding out to any person or entity or governmental agency or court that

Fox is now or at any time has been trustee of the Dille Trust, the Orphan's Court also enjoined Fox from taking any action purporting to be Trustee of the Dille Trust.

The Orphan's Court further noted that since the Beneficiaries had acted in concert with Fox as co-petitioners in filing a petition in the Superior Court of California for the County of San Mateo on August 29, 2020, the Beneficiaries had acted in concert with Fox in representing to others that Fox has ever been or is the Trustee of the Dille Trust. The Orphan's Court concluded that Louise and the Beneficiaries participated in the case before Judge Klein and were bound by this ruling.

*Validity of Louise's appointment as trustee:* On June 6, 2011, the Orphan's Court held that Louise was lawfully appointed Trustee of the Dille Trust by the Beneficiaries in accord with then applicable **Illinois** law, where the Trust was situated and being administered.

While, under Illinois law, when a vacancy in the office of trustee occurs, a majority of the beneficiaries can appoint a trustee, the Orphan's Court observed that there is **no provision** in either **Pennsylvania** or **Illinois** law that empowers a majority of the beneficiaries to **remove** a trustee. Moreover, the Orphan's Court noted that pursuant to 20 Pa. C.S. Sec. 7766, a trustee may be **removed** by the **court** upon request made by a beneficiary.

The Orphan's Court noted that the trustee of a Pennsylvania trust can be ordered to appear and show cause why he should not be removed, and the court can then remove the trustee. The Orphan's Court pointed out that the Pennsylvania statute mirrored Section 701 of the Uniform Trust Code ("UTC"), which, the Orphan's Court further concluded, also is consistent with Illinois law. Since Pennsylvania law doesn't allow the Beneficiaries to remove Louise on their own, the Orphan's Court held that the Attempted Removal by the Beneficiaries did not validly remove Louise as Trustee of the Dille Trust.

Examining Illinois trust law, the Orphan's Court observed that, as of June 6, 2011, ILCS Sec. 5/13(2), provided that if there were no remaining trustees, "*a successor trustee may be appointed by a majority in interest of the beneficiaries.*" 760 ILCS Sec. 5/13(2). Note that the Court did not address the fact that appointment of a non-corporate trustee was likely a trust modification that required application of California law.

*De facto trustee:* The Orphan's Court noted that the Beneficiaries asked Louise to hold herself out as trustee of the Dille Trust, and, further, that all three mistakenly believed that she had been properly appointed under the **California** Code, and the Orphan's Court held that Louise became the **de facto trustee** of the Dille Trust on June 6, 2011. The Orphan's Court further held that Louise continued to be the de facto trustee of the Dille Trust even after August 26, 2018, when both Lorraine and Robert, Jr. took affirmative steps to remove Louise from her de facto trusteeship. The Orphan's Court further noted that CA Probate Sec. 15660 provides that "*on petition of any interested person, the court may, in its discretion, appoint a trustee to fill [a] vacancy*").

According to the Orphan's Court:

*A de facto trustee is an individual who believes they have been appointed as trustee, performs actions on behalf of the trust for the benefit of the beneficiaries and who holds themselves out as a trustee to the third parties, but who has never been legally appointed to the position of trustee. The concept of a de facto trustee applies to uphold the transactions and actions taken in good faith for the benefit of the beneficiaries by an individual who was not legally appointed trustee.*

At the time of the June 6, 2011 purported appointment of Louise, the Orphan's Court concluded that Illinois law permitted the appointment of a trustee by a majority in interest of the Beneficiaries. As of June 6, 2011, in the case of a vacancy, California law only allowed the appointment of a trustee by court order. After June 6, 2011, with the permission and consent of both Beneficiaries, Louise acted as the Trustee of the Dille Trust and was permitted and did hold herself out to third parties as the trustee of the Dille Trust.

After June 6, 2011, with the permission and consent of both Beneficiaries, Louise began administering the Dille Trust from the office of Geer and Herman, P.C., located in Lawrence County, Pennsylvania. The Orphan's Court observed that Louise filed Pennsylvania income tax returns on behalf of the Dille Trust in the years 2011, 2012, 2013, 2014, 2015, and 2016. Louise opened a Dille Trust bank account in Pennsylvania. Louise conducted all Dille Trust business in her capacity as trustee from her offices in Lawrence County, Pennsylvania. On November 27, 2019, Louise filed a first and partial account and statement of proposed distribution as Trustee of the Dille Trust in Lawrence County, Pennsylvania.

***The intellectual property and Bankruptcy Court proceedings:*** As of June 6, 2011, the Dille Trust's United States Trademarks for *Buck Rogers* had expired, but the Dille Trust still maintained Canadian, German, and some other trademark rights, and the Nowlin Family Trust had applied for the U.S. Trademark Rights to *Buck Rogers*. The Dille Trust had very little income and owed approximately 2,000.00 in attorneys' fees to a law firm for work that had been done for the Dille Trust prior to June 6, 2011.

Holding herself out as trustee of the Dille Trust, and with the knowledge, consent, and acquiescence of the Beneficiaries, Louise contested the Nowlin Family Trust's attempt to acquire the U.S. Trademark Rights to *Buck Rogers*. The contest included litigation. The litigation was financed by the Dille Trust and Lorraine. The litigation costs to contest the Nowlin Family Trust's claims to the U.S. Trademark Rights for *Buck Rogers* far exceeded the meager income of the Dille Trust.

On November 28, 2017, Louise, in her capacity as Trustee of the Dille Trust, filed a Chapter 11 Bankruptcy on behalf of the Dille Trust. Louise purposefully did not seek the permission of the Beneficiaries prior to filing the bankruptcy petition. Louise did not notify either of the Beneficiaries that she had filed the bankruptcy action on behalf of the Dille Trust. Lorraine



and Robert, Jr. only learned of the Chapter 11 filing when Lorraine, as a creditor, received notice from the Bankruptcy Court that she was a listed creditor in the bankruptcy action that Louise filed on behalf of the Dille Trust.

On August 26, 2018, the Beneficiaries sent written notice to Louise that she was no longer representing the Dille Trust as trustee. Despite having received the August 26, 2018 notice from the Beneficiaries, Louise continued to hold herself out as trustee of the Dille Trust and continued to act as though she was Trustee of the Dille Trust. On December 11, 2018, the Beneficiaries filed an expedited motion in Bankruptcy Court to dismiss the bankruptcy case as improperly filed. The Nowlin Family Trust and Louise filed objections to the motion.

On February 20, 2019, Judge Jeffery A. Deller dismissed the bankruptcy petition, finding that the Dille Trust was not a “business trust” and, therefore, was ineligible for relief as a Chapter 11 debtor.

**On appeal:** The Orphans’ Court had found that Louise had been lawfully appointed trustee, and that the Beneficiaries’ unilateral attempt to remove her was ineffective under the Dille Trust and Pennsylvania law, which the Pennsylvania Superior Court affirmed. The Orphans’ Court ordered that, from June 6, 2011, until the date of the order, the situs of the Dille Trust was and remained in Lawrence County, Pennsylvania. The Beneficiaries timely appealed, and the Pennsylvania Superior Court affirmed, finding that while the Dille Trust provides, in pertinent part, that “*a majority of the Beneficiaries may transfer the Trust situs to a more convenient jurisdiction,*” allowing the change in situs, as was attempted **twice**, still would not give the California courts ***in personam jurisdiction over the trustee, Louise.***

The Pennsylvania Superior Court further held that while the Beneficiaries had the right to transfer the situs of the Dille Trust to a more convenient jurisdiction, that right must be exercised only in conjunction with either (1) the current trustee, Louise, ***who the Beneficiaries had no express right to remove (even though it appears that the Beneficiaries appear to have appointed an ineligible trustee)***, submitting to the jurisdiction of California (***which Louise could choose not to do***); or (2) pursuant to an order from the Court of Common Pleas of Lawrence County authorizing a change of situs.

The Pennsylvania Superior Court further concluded that the Orphans’ Court was justifiably concerned that allowing the change of situs pursuant to the Dille Trust’s provision ***would leave the Dille Trust, and, in turn, both Louise and the Beneficiaries, the unfettered ability to do as they pleased without court supervision.***

#### **COMMENT:**

Wow!!! Such chutzpah and legal gamesmanship on the parts of not only the beneficiaries but of Fox, who told three different state courts in California (and a second in California **after** the Los Angeles County Court had dismissed due to lack of in personam

jurisdiction over Louise, a Pennsylvania domiciliary) and Pennsylvania that he was trustee, when the record clearly was otherwise-**by his own action 13 years earlier**.

And the plot thickens further because Louise, a dative, subsequently named trustee, couldn't have ever been appointed trustee (although not a corporate trustee, as the Dille Trust required)-which the Beneficiaries themselves did, had Fox (and the other named institutional trustee) not stepped aside and declined to serve. Louise could have solved the issue by resigning as Trustee but instead asserted her right to remain trustee so that she could file a bankruptcy proceeding, without the knowledge or consent of the beneficiaries, with respect to the trust in an effort to collect her own fees.

This case isn't over, but the problem was that the Dille Trust, which was amended once, didn't give the Beneficiaries the power to **remove** a trustee, only to select a new corporate trustee if the office was **vacant**. Louise certainly doesn't appear to be a corporate trustee.

Unfortunately, Louise isn't totally blameless her-her husband represented her, and she filed a petition in the United States Bankruptcy Court that it dismissed, noting "cavalier" disregard for the law and the rules. The Bankruptcy Court also mentions that Louise had contracted with a daughter to produce *Buck Rogers* opportunities for the Dille Trust. The Bankruptcy Court's opinion was most unkind to Louise and her husband.

In the words of Sir Walter Scott, in his play, "Marmion," "*Oh what a tangled web we weave, when first we practice to deceive.*"

### **Some Lessons From This Pile of Cases for the Drafting Attorney:**

#### *Situs*

First, let's consider a refresher on "situs." Legal dictionaries generally define situs with reference to the location or place of something for legal purposes. In the context of trust law, situs can be broken out into the following areas:

- Governing Law.
- Place of Administration.
- Property Location.
- Beneficiary Residence.
- Trustee Residence.
- Settlor Residence.
- Tax Situs. Different states consider different factors.

Governing law is often referenced in the trust instrument in a statement such as "*Governing law shall be that of California.*" Such a statement will generally be deemed to be determinative for purposes of construction issues with respect to the trust instrument. Such language may also control applicable **substantive law**; however, this

may be determined by other factors if not clearly defined in the trust instrument itself. If the trust instrument does not distinguish between governing law for purposes of construction and governing law for purposes of administration, the language may be deemed to apply in both contexts. Trust language is not typically determinative of situs for tax purposes.

Note however that the UTC no longer uses the term “*situs*,” so *those drafting in* the 36 **states** that have adopted the **UTC** should **conform** their drafting to UTC Arts. 107 (***governing law***) and 108 (***principal place of administration***) and, as we stated above, limit their use of the term “*situs*” to **specific** uses of that term, which has import in taxation, conflicts of laws, and other specialized uses.

The location of administrative activity will typically be determinative of situs for administrative purposes. Administrative situs provides the basis for court jurisdiction, which can influence construction of the trust instrument. Administrative activity can also be a basis for tax situs.

When considering the choice of applicable law, courts will first consider what the trust instrument provides regarding ***governing law*** (UTC Art. 107) and ***principal place of administration*** (UTC Art. 108). It is possible that a trust instrument does not contain **any** provision regarding governing law or principal place of administration. In such a case, the law of the state of ***administration*** typically applies.

Trustee residence may or may not be the basis for determining administrative situs. A named individual trustee might delegate all administrative activities to someone in another state. Corporate trustees may rely on regional offices to provide the administrative services. Some states use trustee residence to claim tax situs (e.g., California).

The residence of a beneficiary will typically not result in application of the law of the state of residence for purposes of construction or administration. Beneficiary residence can result in tax consequences for the beneficiary and will be determinative of the tax treatment of the beneficiary as an individual.

The residence of the settlor can result in continuing jurisdiction of the courts in the state of such residence in some states. The residence of the settlor may also result in tax situs of the trust being in the state of residence.

The location of property owned by the trust can result in jurisdiction by the courts in that location. The location of property may also result in taxation based on source income rules.

In the *Dille* case, three states were involved. **California** law applied for **trust construction** purposes. Administration was initially in California, then in Illinois, and then in Pennsylvania. In reviewing the actions of the various attorneys involved, the Illinois

attorney provided a strategy for appointing a trustee. Consider that this case might have been less problematic had the Illinois attorney suggested a trust modification that would allow appointment of a non-corporate trustee as well as removal of an individual trustee at a later date.

Drafting attorneys should consider the issues that are raised when one breaks down situs into its parts, and draft accordingly. Trust instruments should specify the governing law for purposes of trust construction, whether applicable law can be changed, and if yes, by what mechanism. Trust instruments should also specify which law applies for purposes of administration and how that can be changed. In drafting, always consider the possibility that a trust can be a resident of more than one state at a given time. Drafters should avoid the generic use of the term situs.

Appointment of a trustee can be either a matter of **construction** or a matter of **administration**. In this case, the Dille Trust instrument only provided a mechanism to **remove** the trustee during the **lives** of the **settlers**, i.e., during the revocability period. Unfortunately, the language of the Dille Trust instrument did not apply to **removal** (but applied to appointment of a **commercial** trustee to fill a **vacancy**) after the deaths of the settlers.

While one could attempt to construe the language providing for appointment of trustees was intended to apply after death as well as before death, in our opinion, given the simple/relatively unambiguous nature of the subject clause in the Dille Trust instrument, would be an uphill battle of trust construction and a likely losing argument. An option that could have been considered would have been a modification which could have addressed the current need to appoint a non-corporate trustee as well as future trustee changes.

As the Pennsylvania state courts stated, the Dille Trust instrument stated that it was to be **governed** by California law. The process of selecting, removing, or replacing a trustee is a matter of **administration**. In this case, the Pennsylvania state courts held that the **principal place of administration is Pennsylvania**. It is worthy of note however, that situs was not necessarily changed from Illinois to Pennsylvania merely by the Beneficiaries' appointment of a trustee acting in Pennsylvania. A trust can have contacts in multiple jurisdictions **simultaneously**.

When governing law applicable to trust **construction** differs from law applicable for purposes of **administration**, when something like decanting is considered, the state whose **governing law** applies likely controls for purposes of determining whether a trustee has the **power to decant**. The **process** of decanting will be controlled by the state of **administration**. Where there is a conflict of laws, the trust **governing law** provision typically applies.

*Trustee Provisions*

The Dille Trust **unnecessarily limited** the **eligibility** of a successor dative trustee to **commercial** trustees, because the Beneficiaries couldn't find a willing commercial successor trustee to fill the vacancy, with no option but to ask a proper court, although the Beneficiaries opted to take matters into their own hands, with the result being an incredibly truculent and expensive proceeding that seems to be clearly under water. It strikes us that it's **beneath the standard of practice** to not recognize that commercial trustees have restrictions and conditions, including asset value minimums, on accepting new trusts, such that there's always some **not insignificant risk** that the trust will be **unable** to find a **willing** successor commercial trustee (which happened in this case). Thus, **it's indefensible to not anticipate this problem by allowing independent individual trustee if no acceptable commercial trustee can be located within a reasonable period of time, and to provide for minimum qualifications for such individuals.**

With that said, the trust drafter can address concerns that a settlor might have about beneficiaries changing the trustee to someone who will satisfy their every whim by considering various strategies. First, corporate trustee can be defined in a way that does not require asset value minimums. Second, a trust drafter can include Trust Protector provisions who can be authorized to change a trustee in situations like the *Dille* case. Third, the trust drafter can required that when a corporate trustee cannot be appointed, there shall be a minimum number of independent trustees acting. The drafter must strike a fine balance between being too restrictive and creating a trust that will be fodder for creditors.

#### *And a Note on Ethics and Fiduciary Obligations*

- ABA Model Rule 3.1, adopted by California, requires that claims presented be meritorious. Rule 3.3 requires candor to the tribunal. It is hard to imagine why an attorney would represent himself as a trustee without taking all actions to acknowledge the history of the trust. Some of the actions by licensed lawyers in this case are **shocking** and certainly suggest a lack of candor with more than one tribunal.
- Representations to others that one is the trustee of a trust when that is not clear can raise issues beyond legal ethics.
- Trustees have a duty of loyalty, a duty to avoid conflicts, and a duty of good faith.

In this case, we had Attorney Fox representing to a tribunal that he was the acting trustee of a trust at a time when he knew someone else was claiming the right to act as Trustee. And Louise entered into an agreement as Trustee when she knew that her position as Trustee was being challenged. Additionally, Louise filed a bankruptcy action on behalf of the trust without knowledge or consent of the beneficiaries in an effort to collect her own fees.

Appointment of a trustee can be either a matter of **construction** or a matter of **administration**. In this case, the Dille Trust instrument only provided a mechanism to **remove** the trustee during the **lives** of the **settlers**, i.e., during the revocability period.

Unfortunately, the language of the Dille Trust instrument did not apply to **removal** (but applied to appointment of a **commercial** trustee to fill a **vacancy**) after the deaths of the settlors. While one could attempt to construe the language providing for appointment of trustees was intended to apply after death as well as before death, in our opinion, given the simple/relatively unambiguous nature of the subject clause in the Dille Trust instrument, would be an uphill battle of trust construction and a likely losing argument.

As the Pennsylvania state courts stated, the Dille Trust instrument stated that it was to be **governed** by California law. The process of selecting, removing, or replacing a trustee is a matter of **administration**. In this case, the Pennsylvania state courts held that the **principal place of administration is Pennsylvania**. It is worthy of note however, that situs was not necessarily changed from Illinois to Pennsylvania merely by the Beneficiaries' appointment of a trustee acting in Pennsylvania. A trust can have contacts in multiple jurisdictions **simultaneously**.

**HOPE THIS HELPS YOU HELP OTHERS MAKE A POSITIVE DIFFERENCE!**

Paul Hood  
Mary Vandenack

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**CITES:**

*In re Dille Family Trust*, 26 WDA 2023 (Pa. Super. Ct. May 16, 2024); *Murphy v. Bernstein (In re Dille Family Tr.)*, 598 B.R. 179 (Bankr. W.D. Pa. 2019); *Dille v. Geer*, CIVIL ACTION NO. 20-924 (D.C, E.D. PA Dec. 22, 2020); *In re Dille Family Tr.*, Bankruptcy No. 17-24771-JAD (Bankruptcy Court W. D. PA Jul. 25, 2018); *Dille Family Trust v. Nowlan Family Trust*, 276 F.

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