SELECT TAX ISSUES ENCOUNTERED IN ESTATE ADMINISTRATIONS

There are numerous tax issues that counsel may encounter in an estate administration. These would involve income tax, Pennsylvania inheritance tax, federal estate tax and even realty transfer tax. With the limited time given for this presentation, Raymond Vogliano (who is unable to attend) and I picked just a few of the plethora of tax issues that might affect an estate administration and that might be interesting to a wide group of estate practitioners.

I. United States Savings Bonds

A. § 454 election

1. Including interest through date of death on decedent's final return.

2. No partial elections - § 454(a) and Treas. Reg. § 1.454-1(a)(1)(iii).

3. Revenue Ruling 68-145 – election can be used for probate and non-probate bonds.

B. Income Tax on Deferred Interest as Deduction for Inheritance Tax Purposes

1. Because bonds were unredeemed, no deduction for tax. Estate of Scott, 117 Pa. Cmwlth 421, 544 A.2d 544 (1988).

2. Distinguished in Estates of Stewart and Krasner, 21 Fid. Rep. 2d 199 (O.C. Div. Philadelphia 2001), where bonds were either actually redeemed or interest included on final 1040 for decedent. Income tax owed on bonds the income from which was included on final 1040 was deductible. But see Dembowski Estate, 12 Fid. Rep. 2d 380 (O.C. Div. Allegheny County 1992).

3. See also Estate of Stolinski, Memorandum Order at File #02-98-7621. Tax on bonds that had stopped paying interest prior to death was deductible.

II. Sale of Decedent's Residence Property – Capital Loss?

A. Office of Chief Counsel Memorandum dated April 7, 1998.

B. IRS Publication 559 – "**Sale of decedent's residence.** If the estate is the legal owner of a decedent's residence and the personal representative sells it in the course of administration, the tax treatment of gain or loss depends on how the estate holds or uses the former residence. For example, if, as the personal representative, you intend to realize value of the house through sale, the residence is a capital asset held for investment and gain

or loss is capital gain or loss (which may be deductible). This is the case even though it was the decedent's personal residence and even if you didn't rent it out. If, however, the house isn't held for business or investment use (for example, if you intend to permit a beneficiary to live in the residence rent-free and then distribute it to the beneficiary to live in), and you later decide to sell the residence without first converting it to business or investment use, any gain is capital gain, but a loss isn't deductible."

C. Specifically devised residence – if sold by estate to pay estate obligations, an estate should report on Form 1041 only the percentage of the loss recognized on the sale that equals the percentage of the proceeds used by the estate to satisfy the estate's obligations. The balance should be reported directly by the devisee. Office of Chief Counsel Memorandum dated April 7, 1998.

III. Excess Deductions on Termination of Estate

A. IRS Notice 2018-61 – "The Treasury Department and the IRS are studying whether section 67(e) deductions, as well as other deductions that would not be subject to the limitations imposed by sections 67(a) and (g) in the hands of the trust or estate, should continue to be treated as miscellaneous itemized deductions when they are included as a section 642(h)(2) excess deduction…. The Treasury Department and the IRS intend to issue regulations in this area and request comments regarding the effect of section 67(g) on the ability of the beneficiary to deduct amounts comprising the section 642(h)(2) excess deduction upon the termination of a trust or estate in light of sections 642(h) and 1.642(h)-2(a)."

B. AICPA Letter of October 31, 2018 – "The only guidance on how the beneficiary takes these excess deductions into account is found in the instructions for Form 1041…. No other guidance regarding the treatment of excess deductions exists."

C. 2018 Instructions for Schedule K-1 of Form 1041 – "Box 11, Code A – Excess Deductions on Termination. If this is the final return of the estate or trust, and there are excess deductions on termination, you may deduct the beneficiary's share of the excess deductions on line 16 of Schedule A (Form 1040)."

D. 2018 Instructions for Schedule A, Line 16 of Form 1040 – "Only the expenses listed next can be deducted on line 16….Gambling losses… Casualty and theft losses… Loss from other activities from Schedule K-1 (Form 1065)… Federal estate tax on income in respect of a decedent… A deduction for amortizable bond premium… An ordinary loss attributable to a contingent payment debt instrument… Deduction for repayment of

amounts under a claim of right… Certain unrecovered investment in a pension… Impairment-related work expenses of a disabled person."

E. IRS response when inquiry made about the conflict between Schedule K-1 and Schedule A instructions – "At this time, there will be no changes made to the Schedule A (Form 1040) schema 2018v6.0. We will consider making changes to the Tax Year 2019 Schedule A (Form 1040) schema to add the enumeration referring to the Excess Deductions on Termination."

IV. Realty Transfer Tax on Distributions of Encumbered Real Estate

A. PA Department of Revenue, in a relatively new development, is issuing tax assessment notices for any devise of real estate that is subject to a mortgage that is either assumed by the devisee or refinanced by the devisee. The Department's position is that the estate is receiving consideration by the devisee relieving the estate of an obligation. If a will has a specific devise and does not have an exoneration provision, then 20 Pa.C.S. § 2514(12.1) provides that the devisee takes the property subject to the mortgage. Realty transfer tax is assessed based upon the mortgage balance at the date of death. The Department will ask for a copy of the inheritance tax return and a copy of the will if one is not already on file with the Department at the time of its review.

B. Exempt transaction under 72 P.S. § 8102-C.3(7) – A transfer for no or nominal actual consideration of property passing by testate or intestate succession ***from a personal representative of a decedent*** to the decedent's devisee or heir.

C. 61 Pa. Code § 91.193(b)(7) – A transfer for no or nominal actual consideration of property passing by testate or intestate succession ***from a personal representative of a decedent*** to the decedent's devisee or heir. See § 91.159.

C. 61 Pa. Code § 91.159(a) – A ***document*** which evidences a specific or residuary devise of real estate by will or under intestate law and a document under an orphan's court adjudication allocating realty to a surviving spouse as part of his exemption or allowance is not taxable under § 91.193(b)(7) (relating to excluded transactions) ***if the document*** is without consideration or for nominal actual consideration. A transfer made under the exercise of an option to purchase realty under a will is for consideration and is taxable, whether the transfer is a bona fide sale or not.

D. 72 P.S. § 81012-C – **"Document."** Any deed, instrument or writing which conveys, transfers, devises, vests, confirms or evidences any transfer or devise of title to real estate in this Commonwealth, ***but does not include wills***, mortgages, deeds of trust or other instruments of like

character given as security for a debt and deeds of release thereof to the debtor, land contracts whereby the legal title does not pass to the grantee until the total consideration specified in the contract has been paid or any cancellation thereof unless the consideration is payable over a period of time exceeding thirty years or instruments which solely grant, vest or confirm a public utility easement. "Document" shall also include a declaration of acquisition required to be presented for recording under section 1102-C.5 of this article.

E. 20 Pa.C.S, § 301(b) – Legal title to all real estate of a decedent shall pass at his death to his heirs or devisees, subject, however, to all powers granted to the personal representative by this title and lawfully by the will and to all orders of the court.

F. Quality Lumber and Millwork Company v. Andrus, 414 Pa. 411, 200 A. 2d 754 (1964) – Mother dies owning real property with daughter as sole intestate heir. Daughter appointed as administratrix. "Until distribution had been made, the only proper source of the full legal title of the decedent was the administratrix." Footnote – "That Mrs. Andrus was both heir and personal representative does not alter the situation under [predecessor to § 301(b)].

G. Tigue v. Basalyga, 451 Pa. 436, 304 A. 2d 119 (1973) – "While legal and equitable title to the property involved passed to the heirs of the deceased-grantee upon his death under [predecessor to § 301(b)], the title was still subject to all orders of court, particularly so during the period of administration of the estate."

H. Borough of Elizabeth v. AIM SHER Corporation, 316 Pa. Super. 97, 462 A.2d 811 (1983) – Decedent died testate on December 14, 1961 leaving real property to his widow. Will probated and letters testamentary granted to widow on January 2, 1962 according to records in Department of Court Records – Wills/Orphans' Court. On September 2, 1980, widow, in her individual capacity, deeded property to Borough of Elizabeth having previously deeded the property to a corporation that had not been incorporated as of the time of the conveyance. "Appellant [the grantee of the first deed from the widow] argues that James F. Hosmer's will giving all his property to Eleanor Mae Hosmer was ineffective to convey the Monongahela River tract. This argument lacks merit. 20 Pa.C.S. § 301(b) (1975)."

I. Maier v. Henning, 525 Pa. 160, 578 A.2d 1279 (1990) – In the case of specifically devised real property in which the court reviewed the application of §§ 3351 and 3541 of the PEF Code (providing for the joinder of specific devisees in the sale of specifically devised real property and the order of abatement for estate assets), the court stated, "Thus, a

personal representative may only sell specifically devised estate property with the consent of the devisee, or where the proceeds from such sale would be needed to satisfy debts, taxes, and other expenses incurred in the administration of the estate, or if the will so provides…. Thus, by the terms of the Will and the facts of this case, the Executors did not have the authority to sell the specifically devised real property, and were required to obtain the joinder of the Devisees before conveying any interest in the specifically devised real property as required by the Probate, Estates and Fiduciaries Code.[5]" Footnote 5 – "Although a devisee acquires legal title to specifically devised real property at the death of the testator, this title is expressly subject to the powers of the personal representative under the Probate, Estates and Fiduciaries Code and the testamentary instrument and to all orders of the court. 20 Pa.C.S. § 301(b). Thus, until distribution is made, the proper source of the full legal title of a decedent is both in the devisee and in the personal representative."

J. In Re Estate of Krasinski, 2018 Pa. Super. 130, 188 A.3d 461 (2018) – In interpreting 20 Pa.C.S. § 301(b) when there was no specific devise under the decedent's will and a 1099-S was issued to a residuary legatee rather than the estate on the sale of real property in the estate, the court concluded, "the Executor was the seller of the Decedent's real estate, and not [one of the residuary legatees], who was not specifically devised the real estate. As such, the Estate was responsible for the taxable gain from the private sale…." This case has been appealed to the Pennsylvania Supreme Court.

K. Commonwealth v. Passell, 422 Pa. 473, 223 A.2d 24 (1966) – Regarding the conveyance of real property from a corporation to its shareholders upon liquidation "while this transaction did effect a transfer of an interest in this realty, yet such transfer, having been effectuated by operation of law rather than by a "document" is not taxable.

L. Query – Is there really consideration being paid by the devisee to the estate when a specific devise is subject to a mortgage at the death of the testator and there is no exoneration provision in the will? If it is consideration, can that be avoided by the devisee disclaiming the specific devise and taking the property through the residuary estate? 20 Pa.C.S. § 2514(12.1) only applies to specific devises.

RECENT CASES AFFECTING ORPHANS' COURT PRACTICE

I. *In re Estate of Leipold*, 2019 PA Super 123 (Apr. 23, 2019)

The property in this estate was encumbered by a mortgage of over $77,000 as well as other liens. The administrators received an offer of $82,000 on the property: a price that would not satisfy the mortgage and all liens. The administrators of the estate thus sought judicial sale of the real property under 20 Pa.C.S.A. § 3353. The lower court denied the petition on the basis that it could not authorize a judicial sale over the objection of the mortgage holder.

The Superior Court reversed. Its reasoning was as follows:

> As discussed above, Section 3353 permits the personal representative to sell an encumbered property pursuant to a court order at a judicial sale when the court determines that such a sale is desirable for the proper administration and distribution of the estate. 20 Pa.C.S. § 3353. This broad power afforded to the orphan's court under Section 3353 permits a judicial sale even where the mortgagee objects; however, it does not, by itself extinguish the lien, as the lien would attach to the proceeds... Sustaining a mortgagee's objection to a judicial sale when the price is fair and reasonable would estop a personal representative from the proper administration of an estate; it would have a chilling effect upon anyone who is administering an estate from attempting, in good faith, to liquidate encumbered real property that is in less than pristine and immediately saleable condition.
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> Additionally, prohibiting a good-faith judicial sale of encumbered real property for a fair and reasonable price based solely on the objection of the mortgagee would prevent individuals from endeavoring to accept the position of personal representative. Under such a construct, accepting an administrative position would require the personal representative to pay for the maintenance, repair, and upkeep of an encumbered property until the mortgagee, as opposed to the orphans' court, deemed the sale price acceptable. A mortgagee could thus prevent the administration of an estate in perpetuity. We conclude that the broad powers afforded the orphans' court in 42 Pa.C.S. § 8152, 20 Pa.C.S. § 3353, and 20 Pa.C.S. § 3357 prevent a capricious refusal and permits a judicial sale despite the objection of the mortgagee.

II. *In re Walker*, 2019 PA Super 120 (Apr. 22, 2019)

During life, the grantor maintained a revocable trust. Initially, the trust was to distribute to the grantor's probate estate upon the grantor's death. The grantor amended the trust to pay outright to grantor's daughters. During administration of the trust, the trustee diversified the trust assets in illiquid closely held business interests. The grantor made no objection to these investments during life. The grantor died in March of 2015 and the assets of the trust were largely distributed

to the beneficiaries in November. The trustee then filed an accounting of its administration of the trust through the grantor's date of death, to which the beneficiaries objected on several grounds.

The sole issue analyzed by the Superior Court was whether the beneficiaries had standing to contest the account in the first place. The Superior Court found that the beneficiaries lacked standing, reasoning as follows:

> [W]e observe the comment to Section 7753 offered by the Joint State Government Commission notes that "Subsection (a) places a revocable trust on the same footing as a will, under which no beneficial interest is effective until the testator's death." …It is undisputed that, as trustee of the revocable trust, Appellee owed a duty to Decedent during her lifetime and Daughters' rights as beneficiaries were subject to Decedent's control... As illustrated above, all of the investments, which Daughters allege resulted in a breach of duty by Appellee, occurred during Decedent's lifetime. The record further indicates that Decedent consented to and approved the investments made by Trustee. Decedent's acquiescence to the investments made by Appellee was binding upon Daughters and relieved Appellee of liability to them... This consent by Decedent is a bar to the action on the part of Daughters because they are not aggrieved by Appellee's conduct as trustee... Hence, Daughters, as beneficiaries, are not the proper parties to present the legal challenge to the matter involved.

III. *In re deLevie*, 2019 PA Super 42 (Feb. 15, 2019), reargument denied (Apr. 23, 2019)

Appellant was named as agent for healthcare of his mother ("Mother") under her healthcare directive. Mother was a resident at a skilled nursing facility. Appellant was extremely overzealous concerning Mother's care and hostile to the facility. He threatened nurses, demanded documentation that the facility was not obligated to provide, threatened to report the facility to authorities, and made unauthorized bed-side videos of nursing staff. Appellant was extremely opposed to the method which the facility used to transport Mother, so much so that, in order to appease appellant, they offered to have a neutral third-party doctor make a determination as to whether the method used by the nursing facility was the best method for Mother. Appellant refused to allow this third-party doctor access to Mother. The nursing facility then offered that Appellant choose three third-party doctors from which the facility could choose from for such purpose. Appellant refused to do that as well. The doctor at the facility then sent notice to Mother that he would cease being her healthcare provider in 30 days. Appellee then petitioned to remove Appellant as agent and appoint Appellee as Mother's healthcare agent under the document. The lower court found that it was in Mother's best interest that Appellant be removed and replaced with Appellee.

The Superior Court found no abuse of discretion on the part of the lower court, reasoning:

> The [c]ourt has the power to revoke the Health Care Power of Attorney. [20 Pa.C.S.A.] § 5454(d)(2)…Having [Appellant] remain as Health Care Agent would impact Mother's treatment because of his full refusal to work with Foxdale staff resulting in Dr. Sepich refusing to be Mother's doctor while [Appellant] is the Health Care Agent. It is in Mother's best interest for Petitioner to be the Health Care Agent and work with Foxdale to preserve Mother's residency and relationships. The portion of the Health Care Power of Attorney naming [Appellant] as Health Care Agent is revoked and Petitioner is appointed Health Care Agent…A person may be disqualified from acting as Health Care Representative by the court for cause shown. [20 Pa.C.S.A.] § 5461(e). Foxdale's staff has stated they will not continue to provide medical treatment to Mother while [Appellant] is acting as her Health Care Agent or Representative. The [trial court found] this is sufficient to disqualify [Appellant] from acting as Health Care Representative, as it is in Mother's best interest to continue with her onsite doctors providing for her medical care. Upon review of the applicable statutory provisions and case law, we discern no abuse of discretion or error of law. The trial court is permitted to remove a health care agent or health care representative for cause shown. Here, the trial court determined that Petitioner showed cause to remove Appellant because he was not acting in Mother's best interest with regard to her medical care. The record supports that determination and we discern no abuse of discretion or error of law.

IV. *In re Estate of Tscherneff*, 2019 PA Super 25 (Feb. 1, 2019)

During the decedent's life, decedent's son was his agent under his power of attorney and decedent also named him as executor under his will ("Appellant"). While decedent was alive, Appellant made several gifts from his father to himself and his sisters, but not his brother ("Appellee"). Such gifts were a recognition for the care for the decedent. Decedent's will distributed his estate evenly to his children. At death, decedent owned one investment account. During life, the decedent had maintained a joint bank account with his daughters and Appellant. Appellee filed a petition to remove executor. Executor filed an account. The lower court denied the petition to remove and further denied the executor's petition for adjudication, ruling that executor must revise the account to include the joint bank account and distribute the entire probate estate to Appellee. The lower court determined the will was unambiguous but took extrinsic evidence of events occurring after execution of the will into account in making its ruling. The lower court treated the *inter vivos* gifts as advancements.

The Superior Court reversed, reasoning that the lower court could not take into consideration evidence after the execution of the will concerning inter vivos gifts, that the will was unambiguous and did not contemplate advancements or set-offs for the same, and that the lower court committed an error of law in interpreting decedent's intent with his global estate plan based on his will. The Superior Court also reversed on the basis that the lower court erred in raising the issue of the joint account *sua sponte*. The Court stated:

> [T]he proper mechanism for challenging the Executor's failure to include estate assets in the account is to file objections to the account, which [Appellee] did not do. Nor did he seek an accounting of Executor's actions as power of attorney. Moreover, the issue was neither argued at the hearing, nor briefed by the parties in the court below. Thus, when the court ordered Executor to file an amended account to include the [joint bank] account, it acted *sua sponte*. "[I]t has long been held that a court may not raise an issue *sua sponte* that does not involve the court's subject matter jurisdiction" … Nor should a trial court act as a party's advocate…By *sua sponte* deciding that the B & B Bank account was an asset of the estate when the issue had not been raised by either party, the Orphans' Court deprived the Executor of an opportunity to be heard and inappropriately acted as an advocate for [Appellee]. Accordingly, we must reverse.

V. *In re Nadzam*, 2019 PA Super 14, 203 A.3d 215, 221–22 (January 14, 2019)

The decedent died with no assets for probate. The decedent's agent under his power of attorney was named as sole beneficiary under decedent's will. The decedent's prior will had named his children as beneficiaries. All of decedent's property was given to decedent's agent during life, some by decedent directly, and some under the power of attorney. Appellant, decedent's daughter, filed a petition for an account under the power of attorney. Appellee filed preliminary objections for lack of standing which the lower court granted, reasoning that, if an account under the power of attorney revealed misfeasance, the only aggrieved party would be Appellee. The lower court suggested that Appellant file a petition for Appellee to deposit the will and challenge that first so as to satisfy the standing requirement. Appellant appealed.

The Superior Court affirmed, reasoning:

> [Appellant] has established no fiduciary relationship between herself and [Appellee], nor alleged any fraud on the part of [Appellee] in exercising her agency powers. Rather, the allegations of impropriety in the petition relate to transfers that occurred before Decedent executed the power of attorney, and to [Appellee]'s influence upon Decedent's modification of his will…[Appellant] failed to allege facts to establish her standing to seek an accounting…[Appellant] asserts that, even if standing is required, she has established herself as an aggrieved party because she is the intestate heir...We disagree. As the orphans' court explained, [Appellant] is not at present a party-in-interest who would be aggrieved by such actions:…Were this court to entertain [Appellant]'s request for an accounting and irregularities were discovered, and then impose a surcharge upon [Appellee] for breaching her fiduciary duty, any amounts she is surcharged would ultimately be returned to the estate of which she is sole beneficiary; this seems like a fruitless exercise.…Following a will contest in which [Appellant] prevails, this court would agree that she would have standing to then compel an accounting and contest any actions taken by [Appellee] as agent under the power of attorney and any amounts thereafter surcharged would be returned to the estate to which [Appellant] would be a beneficiary.

VI. *In re Passarelli Family Tr*., 2019 PA Super 95 (Mar. 28, 2019)

A husband and wife created a trust for their and their children's benefit during life and for their children's benefit and their issue following their death. Approximately $14.5mm in assets were transferred to the trust. The Husband used one of the assets in the trust, a closely held company called "Japen," to purchase two Florida properties, one of which he used to house his girlfriend, with whom he was having an extramarital affair. During the divorce proceedings, the wife sought to dissolve the trust for fraud committed by the husband through a petition in the Orphans' Court. Wife admitted that she never read any of the trust documents or schedules. The Orphans' Court found that fraud had occurred by husband's concealing assets going into trust and that, had the wife known about the arrangement with the girlfriend, she would have never signed the trust documents. In making its finding the lower court applied the two-part test for fraud in *In re Estate of Glover*, 447 Pa.Super. 509, 669 A.2d 1011 (1996).

The Superior Court reversed, concluding that the *Glover* test was inapplicable. *Glover* was based on another case dealing with undue influence from which *Glover* gleaned its rule for fraud in the inducement to make a will. Further, wills, unlike irrevocable trusts, can be revoked or modified during the lives of the makers. The court concluded that a stricter standard for fraud must be applied to irrevocable trusts, laying down six elements: "(1) a representation; (2) which is material to the transaction at hand; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) the resulting injury was proximately caused by the reliance."

The Superior Court then applied this rule to the instant case, and found that no misrepresentation occurred, reasoning that:

> [Wife] has failed to demonstrate that [husband], having disclosed Japen and its aggregate valuation, also had a duty to disclose each and every asset owned by Japen. [Wife] cites to nothing in the law of trusts—and our research has disclosed nothing—requiring that each and every asset composing the *res* of a trust be specifically identified by a settlor. While a trust is invalid unless the subject matter is definite or definitely ascertainable, trust property need not be segregated, designated or specifically described; a valid trust is created where the identity of the *res* is clear and the description sufficient..."It is the identity of the fund, not of the pieces of coin or bank notes, that controls." In re Vosburgh's Estate, 279 Pa. 329, 123 A. 813, 815 (1924).
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> Here, Japen and its total value were identified in Schedule "A" to the Trust. The description provided was sufficient to describe and identify the particular asset contributed to the Trust…Indeed, it would be patently absurd to require that each and every asset of a corporate entity be identified upon the entity's contribution to a trust in order to constitute a valid transfer. A corporation is, itself, an identifiable asset and can be sufficiently described by its corporate name.

VII. *Gavin v. Loeffelbein*, 2019 WL 1339487 (Pa. Mar. 26, 2019)

In this case, the lower court issued an emergency guardianship order. Following a full hearing, the lower court determined that the Appellant's estranged spouse was incapacitated (the "Ward"). However, the emergency order stated that the full guardianship hearing would take place "within 30 days." After the 30-day period had passed, but before the full guardianship hearing, the Ward and his sister entered Appellant's residence and removed property. Prior to doing this, the Ward's sister called the court-appointed guardian to ask if she would retrieve the property, but she refused. The Appellant sued the Ward's sister for trespass and conversion among other things. At trial, the lower court instructed the jury that, though the Ward lacked capacity, he didn't lack the ability to participate in the administration of his guardianship estate. The jury rendered a verdict for Appellee.

On appeal, the Superior Court, *sua sponte*, ruled that the emergency guardianship order automatically terminated. The Supreme Court then determined whether emergency guardianship orders automatically expire and whether the rebuttable presumption that incapacitated persons are unable to engage in financial transactions applies when such person is under an emergency guardianship order. The Supreme Court reversed the Superior Court and held that emergency guardianship orders do not "automatically" expire and that "an individual under the protection of an emergency guardianship order has been determined to lack sufficient capacity to make certain decisions and that the extent of his decision-making capacity depends on the specific "powers, duties and liabilities" afforded to the guardian by court order" stating:

> This singular difference between sections 5511 and 5513 does not support Appellee's contention (and that of the lower courts) that the General Assembly intended that individuals under the protection of an emergency guardian may continue to make independent decisions about matters expressly assigned to their guardians. Just as with a guardian appointed pursuant to section 5511, once the court appoints an emergency guardian, it is the court's decree, narrowly tailored and limited to the individual's specific deficiencies, that determines what kinds of decisions an individual will no longer be permitted to make. That a guardian is appointed after an emergency proceeding does not itself impact the extent to which an individual is legally incapable of making decisions. Rather, by assigning specific duties to the guardian, the orphans' court designates those areas of decision making to be within the exclusive purview of the guardian. If this were not the case, the entire purpose of appointing an emergency guardian – which is to avert irreparable harm resulting from decisions made by the incapacitated person – would be undermined. Any other interpretation of the relevant statutory language leads to an impermissibly absurd result, namely, that the allegedly incapacitated person is in need of a guardian and that irreparable harm will result without one, but that the incapacitated person is still capable of making his own decisions in the areas where incapacity has been demonstrated. Neither the potentially truncated nature of a section 5513 proceeding nor the limited duration

> of the resulting guardianship renders the incapacitated individual any more capable of making decisions in those areas assigned to his guardian by court order. It simply cannot be the case that an individual is presumed competent even in the areas over which a guardian has been assigned control.

VIII. Two Upcoming Cases Before the Supreme Court to Watch For:

In re Estate of McAleer, 201 A.3d 724 (Pa. 2019). The question to be decided by the Supreme Court:

> Do the attorney-client privilege and work product doctrines protect communications between a trustee and counsel from discovery by beneficiaries when the communications arose in the context of adversarial proceedings between the trustees and beneficiaries?

In re Estate of Krasinski, 198 A.3d 1045 (Pa. 2018). The question to be decided by the Supreme Court:

> Does Pa.R.A.P. [...] 342(a)(6), which provides for an immediate appeal as of right from Orphans' Court orders "... determining an interest in real or personal property[,"] also allow or require an immediate appeal from an order of the Orphans' Court permitting or denying the personal representative the authority to sell real or personal property, such that filing the appeal from the Order confirming the [f]irst [and] [f]inal account was deemed to be a waiver of those issues?