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## THE NEED FOR INTEGRATED PLANNING

A recent Michigan Court of Appeals opinion illustrates the need for clients to make sure that their estate and financial plans are thoroughly coordinated and integrated.

In *Smallegan v. Kooistra* (2007 WL 840123, Mich. Ct. App., March 20, 2007), the decedent, Florence Smallegan, was referred by her attorney, defendant Ronald Kooistra, to a large financial services company for the preparation of her estate plan. The plaintiff and decedent's son, Kenneth Smallegan, was involved in the estate planning discussions with Ms. Smallegan and Mr. Kooistra. A Charitable Remainder Unitrust (CRUT) was the central part of Ms. Smallegan's estate plan. The CRUT would remove \$900,000 of appreciated stock from her estate, and she would have limited control over the assets as trustee of the CRUT. Ms. Smallegan would receive the trust's earnings during her life, and at her death, the trust corpus would be turned over to the charity designated in the trust. The financial services company representatives told Ms. Smallegan that the assets transferred to the trust could be replaced at her death by the proceeds of a life insurance policy. The insurance policy would be funded using the earnings from the trust. Mr. Kooistra prepared the CRUT documents. Three days prior to executing the CRUT documents, Ms. Smallegan was denied life insurance coverage. The financial services company representatives, however, told her that they could find a suitable life insurance policy. Ms. Smallegan executed the CRUT documents and transferred the stock to the trust. Ms. Smallegan's further life insurance applications were denied, and she gave up in her attempts to find a life insurance policy. Ms. Smallegan died without the anticipated life insurance in place.

Mr. Smallegan filed suit against the defendant attorney to recover the value of the nonexistent life insurance policies. Mr. Kooistra claimed that the trust worked as designed, and that it did not contain any errors that would trigger liability. The court stated that according to the "four-corners rule," "if a

testamentary document clearly performs a function as designed, a would-be beneficiary has no grounds to challenge whether its function was actually intended by the decedent.” The court said that the CRUT reflected Ms. Smallegan’s intent to distribute \$900,000 in stock out of her estate. The trust did not contain any confusing or ambiguous language, and further, the trust did not indicate any intent to preserve the assets committed to charity. The court further stated that the trust did not indicate that it was conditioned upon insurance being obtained that would benefit the plaintiff.

Mr. Smallegan next asserted that the decedent’s application for life insurance was a testamentary document that should be read together with the trust in order to reveal the decedent’s true intent. The appellate court agreed with the trial court that the insurance application was not a testamentary document because the application does not distribute assets and does nothing to increase a beneficiary’s capital.

Mr. Smallegan further argued that even if the CRUT itself is an unassailable legal instrument, then the defendant attorney still committed malpractice by advising Ms. Smallegan to transfer her assets into the CRUT without first making sure the anticipated life insurance was in place. The court said that this theory of malpractice would have only created a cause of action in the decedent, and that the plaintiff did not demonstrate how the defendant attorney breached any duty to him as personal representative of the decedent’s estate, trustee of the CRUT, or individually as a potential beneficiary of the decedent’s estate.

Mr. Smallegan’s final argument that he had a personal claim against Mr. Kooistra failed, because the defendant attorney never owed Mr. Smallegan an individual duty to stop Ms. Smallegan from transferring her assets into the CRUT without the life insurance in place. The court said that Mr. Kooistra did nothing to make Ms. Smallegan less insurable, and he did not interfere with her attempts to obtain coverage. The court stated that Ms. Smallegan executed the trust in 1998, and from that time until her death in 2002, she took no action to disavow the trust, rescind it, or seek recourse against those who recommended it. The appellate court upheld the trial court’s decision to grant the defendant attorney’s motion for summary judgment.

Clients should beware of representations made regarding points not covered by their estate planning documents. The attorneys at Oast & Hook can assist clients with fully integrating their estate, financial, and insurance plans to achieve their desired objectives.

### **Speakers**

If you are interested in having an Elder Law attorney from Oast & Hook speak at an event, then please call Jennifer Lantz at 757-399-7506.

### **Oast & Hook**

Oast & Hook is an elder law firm. We represent older persons, disabled persons, their families, and their advocates. The practice of elder law includes estate planning, investment and insurance advice, estate and

trust administration, powers of attorney, advance medical directives, titling of assets and designations of beneficiaries, guardianships, conservatorships, and public entitlements such as Medicaid, Medicare, Social Security, and SSI, disability planning, income tax planning and preparation, bill paying, account management and reporting, care management, and fiduciary services. We also handle litigation involving these issues, such as will contests and estate administration disputes. For more information about Oast & Hook, please visit our website at [www.oasthook.com](http://www.oasthook.com).

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