

Memorandum 88-19

Subject: Study L-1030 - Fees of Corporate Trustees

Attached as Exhibit 1 is a letter from the Assembly Member of the Law Revision Commission -- Elihu M. Harris. Assembly Member Harris requests that the Commission further explore "the relationship between bank trustee departments and consumers beneficiaries of such services, with regard to fees charged to consumers, particularly unrepresented beneficiaries and beneficiaries of small estates." He is concerned in part that corporate trustees are refusing to accept appointment as executors or administrators unless the estate is a sizable one. (This latter concern is discussed briefly in Memorandum 88-12 (attorney fees) where it is suggested that the Commission consider whether it would be desirable to permit the estate attorney to serve as personal representative for small estates and be compensated for both services.) Assembly Member Harris discusses his other concerns in some detail in his letter. You should read his letter with care.

The Commission has made two surveys on some aspects of this problem--one survey of attorneys and another of corporate trustees. Briefly summarized, fifty-eight percent of attorneys responding to the survey who have a significant trust practice reported receiving complaints about corporate trustee fees. The Commission itself never considered the results of these surveys. Instead, the Commission discontinued the study of corporate trustees' fees. This action was taken because the Commission was informed that Assembly Member Harris had decided to have the State Bar Estate Planning, Trust and Probate Law Section and the representatives of corporate trustees jointly develop the necessary legislation for the 1988 session. See the letter from Ann E. Stodden to Assembly Member Harris dated October 1, 1987 (copy attached as Exhibit 2).

The letter from Assembly Member Harris concludes:

Without court supervision of trust fees, consumers are unprotected. Automatic protection of these consumers has been suggested if there is a need to provide some protection.

It is requested that the Commission seek the broadest possible input, especially from persons other than probate attorneys. It is suggested that, at the least, questionnaires be sent to the larger bar associations for them to circulate to the appropriate consumer population.

What action does the Commission wish to take in response to this request from Assembly Member Harris?

Respectfully submitted,

John H. DeMouilly
Executive Secretary



CALIFORNIA LEGISLATURE

Assembly Committee

on

Judiciary

ELIHU M. HARRIS
CHAIRMAN

LA LAW REV. COMMISSION

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January 26, 1988

John DeMouly
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303

Dear John:

Enclosed is a copy of an article from the San Diego Union which illustrates the problems which have been created by the withdrawal of testamentary trusts from court supervision.

I request that the California Law Revision Commission further explores the relationship between bank trustee departments and consumers beneficiaries of such services, with regard to fees charged to consumers, particularly unrepresented beneficiaries and beneficiaries of small estates. There are several concerns with regard to bank trustees, in particular that they charge a disproportionate (unreasonable) fee on smaller estates (under \$1 million); refuse to act as trustee of smaller estates (under \$1 million) in spite of being named as trustee in the trust document; and/or refuse to be removed as the trustee without the beneficiary seeking court intervention or removal.

Those attorneys who specialize in trust matters have been able to arrange resignations by corporate trustees in those cases where complaints have come to the attorneys' attention. However, a substantial number of trust beneficiaries are either unaware of fee increases which would give them cause to complain or, if they are aware, have not contacted an attorney either because they could not afford one, because they are intimidated by the legal system or for other reasons. In other words, beneficiaries who contact counsel may get results, but the arguably greater number who do not contact counsel have been adversely affected by increases in fees which the banks represented to the Legislature would not be made.

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January 26, 1988

Further, the fees of executors and administrators are set by the California Probate Code and are based on decreasing percentages of the value of a probate estate. One of the philosophical arguments used to justify this system is that the large fees earned for services to a large estate offset the fact that attorneys and fiduciaries often lose money in handling smaller estates. The California Law Revision Commission is currently studying the subject of the fees of executor and fiduciaries in probate matters. The Executive Committee of the Estate Planning Section is advocating the retention of the statutory fee system.

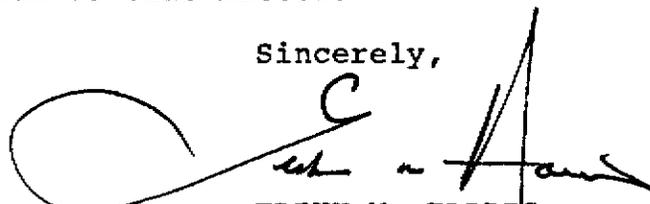
One problem in question has to do with the fact that some corporate fiduciaries are refusing to accept appointment as executors or administrators unless the estate is a sizable one. For example, it is my understanding that Wells Fargo Bank refuses to accept appointment as personal representative of an estate having a value of less than \$1,000,000, unless the will contains a trust; and even if a trust is involved, that particular bank will not accept the estate unless it has a value of \$500,000 or more. Fiduciaries who impose limitations of this kind are "skimming the cream." An institution which holds itself out as a professional fiduciary should not be permitted to take advantage of the compensation scheme that is based in part on a sort of Robin Hood theory by which the profits from the handling of a large estate offset the losses from the handling of smaller estates.

Without the court supervision of trust fees, consumers are unprotected. Automatic protection of these consumers has been suggested if there is a need to provide some protection.

It is requested that the Commission seek the broadest possible input, especially from persons other than probate attorneys. It is suggested that, at the least, questionnaires be sent to the larger bar associations for them to circulate to the appropriate consumer population.

Thank you for your attention to this matter.

Sincerely,



ELIHU M. HARRIS

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Enclosure

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buy, he said.
Baker has high hopes for his presentation at the UCSD forum, which its organizers describe as a meeting ground for companies that need money and the investors who have it. However, his appearance and that of 25 other entrepreneurs should not be construed as a public appeal for investment, he said.
Although he has applied for a \$400,000 Small Business Innovative Research grant, Baker clearly sees his presentation at the UCSD forum as a critical opportunity to "connect" with a financial backer.
Citing regulatory and technical obstacles, several venture capital and pharmaceutical industry officials say Baker is going up against considerable odds. Many minimize his chances of ever getting venture capital, much less succeeding in getting an oral contraceptive to market.
"We've looked at (financing) a couple of products like this but we've turned them down. There are significant technical hurdles to get

Inc. and a venture capitalist, said contraceptives are a "difficult business to get venture capital for."
"The situation is, you are giving something to a normal healthy person. If something goes wrong, the liability is astronomical," Birndorf said, adding that liability claims against A.H. Robins filed by Dalkon Shield users helped push the company into bankruptcy proceedings.
Generally speaking, now is not a particularly good time to be looking for venture capital. Stung by many bad investments in high technology companies in the early 1980s, many venture firms have taken a more conservative approach to investing.
The pie of available funds has shrunk over the past three years, increasing the competition among entrepreneurs clamoring for a piece of it. Venture capital committed nationwide last year totaled about \$2 billion, less than half the \$4.3 billion total funds invested in 1983, the peak year for such investments.

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Trust account clients lose faith after Wells Fargo raises rates

By Susan Burkhardt
Staff Writer

Her first thought was, "That doesn't mean me."
For North County resident Grace Hinman, the Dec. 29 letter from Wells Fargo Bank was obtuse, and when she finally understood it two days later — it was also shocking.
A customer of the bank for 18 years, Hinman held two small trusts under Wells Fargo's management. These were the source of her only income, about \$30,000 a year. Each was under \$1 million in assets.
She paid the bank about \$5,000 a year in fees to manage her trust accounts, but on Dec. 29, Wells Fargo's trust department prepared a letter that raised her annual fee to \$15,500 effective Feb. 1.
The letter wasn't mailed until Jan. 17, and it was received on Jan. 20, Hinman's documents show. Hinman had only eight working days to avoid a three-fold increase in her fees that could have effectively wiped out half her livelihood, she said.

"I don't know anyone who can live on \$14,000 a year. This is absolutely how I exist. The reason for my initial hysteria was because I wouldn't be able to pay for my house," she said.
There was no phone number or clear name of a contact person provided on the letter — just a post office box address in Los Angeles.
Hinman didn't know who to call because she had lost her trust officer last summer in a personnel shake-up which wiped out 30 percent of the staff at the bank's trust department, according to Hinman and Wells Fargo officials.
So she went down to her local Wells Fargo branch, and cried.
The message she finally got from the bank, she says, was "seek another trustee."
Her situation is significant in the wake of Wells Fargo's acquisition of Crocker Bank last year, and its recent announcement that it planned to acquire Bank of America's personal trust services division.
The two events will clearly make

Wells Fargo Bank the largest provider of consumer trust services in the state of California with \$28.3 billion in assets under management. Wells' next major competitor in trust services is Security Pacific Bank with some \$10 billion in assets under management.
And Hinman's situation isn't unique.
Wells Fargo sent an identical schedule of fees with a letter dated Dec. 29 to the majority of its 14,000 trust accounts in the state of California, according to Wells Fargo officials.
To say Wells Fargo's competitors are happy about the situation is an understatement. They said this week that during the last 60 days they have received numerous inquiries from dissatisfied Wells Fargo, BofA and Crocker customers, looking to move both large and small trust accounts.
"When Wells Fargo bought Crocker (June 1986), the inquiries started coming. When they announced the
See WELLS FARGO on Page I-7

S. A. Gordon
2-8-87



Graphic
notify

Wells Fargo: Rates raise ire

Continued from I-1

acquisition of BofA's trust department, we got inquiries from both Crocker and BofA customers. But after the Wells letter got to their clients — the snowball is really rolling now," said Gregory Sanford, director of marketing and sales for Security Pacific's trust business.

In fact, Security Pacific plans to launch a major new advertising campaign tomorrow targeted at the troubled Wells Fargo trust customer, although it won't use the bank's name, Sanford said.

Only Wells Fargo trusts under \$1 million, however, will be grossly affected by the Dec. 29 increase in the fee structure. Generally, trusts \$1 million and under are charged 1 percent of assets — \$3,000 per \$300,000 for example, and on up to \$10,000 per \$1 million of assets.

But on Dec. 29, Wells Fargo Bank raised its minimum annual fee from \$3,000 to \$10,000, sending a strong economic message to its trust customers with assets under \$1 million — customers like Hinman.

Alexander Anderson, who is in charge of Wells Fargo's private banking and trust department, admitted that the bank is attempting to encourage its small trust customers to liquidate their individual trust holdings, and put their money into a common trust fund — a pooled investment portfolio — managed by Wells Fargo.

He said such an option actually gives Wells Fargo's customers more choice, and possibly a better return. Other industry professionals disagreed with that, however, saying such a fund does not permit trust customers to choose their own investments.

But Anderson categorically denied that Wells Fargo is not interested in small trust accounts. He explained that Wells Fargo has a trust product with a minimum annual fee of \$600 which could accommodate a trust as small as \$50,000.

"Perhaps we erred in Hinman's

case," Anderson said. He explained that when Hinman contacted Wells Fargo about the letter, the trust officer should have said, "We'd welcome your business if you agree to use our diversified (common trust) funds."

Hinman said such a message was never relayed to her in any way.

In addition, the change in the fee schedule was mailed out in early 1987 — a year in which a major tax overhaul took effect. Moving a trust to avoid higher fees — even shifting assets into a common trust — requires liquidation of assets, and can result in capital gains.

Therefore timing was critical for trusts operating on a calendar year ending Dec. 31. In 1986, 60 percent of an individual's capital gains were excluded from taxation. In 1987, capital gains are 100 percent taxable, albeit at a lower rate.

And the majority of Wells Fargo's 14,000 trust accounts in California are operated on a calendar year, Anderson admitted. That means that in some cases account holders may not have been informed in time to address their tax situation in light of the fee increases.

For whatever reason, "the decision was made to send out the letter (boosting trust fees) at the end of the year (1986)," Anderson said. November was not viewed as an appropriate time to send it because of the crush of Christmas mail, he said, so it was prepared in late December.

He did allow, however, that the notification probably "could have been done better."

Hinman said the decision to send the letter Jan. 17 was "stupid."

D.R. Johnson, director of trust activities for the comptroller of the currency in Washington, D.C., which regulates national banks like Wells Fargo, said the regulators permit the banks to charge whatever fees they find necessary. But the size of the fee increase for the small Wells Fargo trust customer "is rather incredible," he said.

"It's the customer's prerogative to

seek another trustee. This may be difficult for people who are elderly or who may not have understood the letter (as in Hinman's case)," Johnson said.

Hinman added that finding out what Wells Fargo meant by the letter, hiring a lawyer to respond to it and then looking for a new place to put her trust account almost turned into a full-time job during the last two weeks.

"I'm 55 years old, but what if I was 75 years old? What if I was in a nursing home? I'm pretty young for a trust beneficiary. Wells Fargo didn't notify people far enough ahead of time. There is nothing decent about the way they are doing it. It's just wrong, wrong, wrong," she said.

Anderson countered that some of Wells Fargo's customers were informed verbally before the letter went out about the fee change.

"That (the timing of the letter) would bother me," said Jerald Lewis, manager of San Diego Trust's Trust Group. "We try to give our trust customers 30 days notice of fee increases. If we can't do it before the end of the year, we won't do it. And this was a particularly crucial year (because of the tax change)," he said.

Anderson said because the letter was dated Dec. 29, it was obviously intended to go out Dec. 29, and he couldn't explain why Hinman's was mailed Jan. 17. However, Lewis said the inquiries from Wells Fargo's small trust customers at San Diego Trust started about Jan. 15, which could indicate others in San Diego received their letters late as well.

Wells Fargo's competitors — San Diego Trust, California Federal's Trust Services of America and Security Pacific — each have minimum annual fees ranging from \$1,750 to \$3,000, which means they welcome individually managed trust accounts with assets from \$175,000 to \$300,000 and on up.

In addition they have available the same common trust accounts for smaller trusts as tiny as \$50,000.

Your advice is \$800 per day. Write/call: Lee Be P.O. Box 24502 (81)

Wells Fargo

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FINANCING

CALIFORNIA LAW REVISION COMMISSION

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October 1, 1987

Hon. Elihu M. Harris
State Capitol, Room 6005
Sacramento, CA 95814

Dear Assemblyman Harris:

This letter is to confirm our understanding concerning your request that the Law Revision Commission study corporate trustees' fees. At the Commission's September meeting, representatives of the California Bankers Association and of the Executive Committee of the State Bar Estate Planning, Trust and Probate Law Section, as well as the Commission's staff, reported on a meeting held in your district office on August 21. The Commission was informed that the interested parties had committed to developing legislation for the 1988 session and, further, that you did not expect the Commission to duplicate this effort. Accordingly, the Commission does not plan to give further study to this matter. Please advise us if you want us to reactivate this study.

I have asked the Commission staff to send you a final report on the results of the two surveys of attorneys and corporate trustees that the Commission conducted earlier this year in preparation for considering this subject.

Sincerely,

Ann E. Stodden
Chairperson