From: "Martin B. O'Connor II" <[redacted]>
To: jeffrey E. <jeevacation@gmail.com>
CC: Siegal Peggy <[redacted]>
Subject: Fwd: Siegal--Peggy_Settlement Agreement.DOC Attorney-Client Privileged Communication
Date: Thu, 20 Nov 2014 12:16:02 +0000
Attachments: 109841119_v_6_Siegal--Peggy_Settlement_Agreement.DOC

J
Yes. Appreciated. Please see below revised draft prepared by Jim.
Best
M

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Begin forwarded message:

From: <[redacted]>
Date: November 19, 2014 at 5:12:41 PM EST
To: <[redacted]>
Subject: Siegal--Peggy_Settlement Agreement.DOC Attorney-Client Privileged Communication

Peggy and Martin

I have attached a revised version that attempts to accommodate some of the changes requested by Ms. Dyce but holding firm on the amount and on the prevailing party attorney fee
provision. I also addressed Jeffrey's points below.

Jim

1. The note from Gary's attorney at the top of the Settlement Agreement about Peggy being required to sign and deliver to Gary any necessary instrument to close the Estate of Annette Siegel and the Trusts seems unnecessary, as the expressed concerns would appear to be addressed in paragraph 7, which provides that "Each of the parties agrees to execute and deliver any and all necessary or proper instruments to carry out the purposes and intent of this Agreement" To the extent what is requested is necessary and acceptable to Peggy, it would require a slight addition at the end of paragraph 7.

I agree.

2. The opening provisions of the Settlement Agreement should name Gary as a party, individually, and in his representative capacities as trustee of the Marital Trust and the Annette Trust and as Person Representative of the Estate of Annette Siegel.

I agree.

3. Recital K appears to be the basis for the consideration to be given to Peggy. Is the stated sum correct? Also, there is a reference in recital K to "50% of the balance of the reserve, if any remains." What is "the reserve"? It is not defined in the agreement.

The reserve fund is an item described in the last accounting. It is $40,000.

4. In paragraphs 2, note that any reference to Gary having an individual obligation to make any payment provided for therein is eliminated. Also note that in paragraph (ii) of paragraph 2 there is a reference to a payment of $150,000. Is this something that can come from the trusts or the estate or must it come from Gary? If so, then deleting Gary in his individual capacity from paragraph 2 would be inappropriate.

It can come from any source. I agree.

5. In paragraph 3, reference to Gary's individual liability is deleted from the beginning of the paragraph, but is kept in at the end of the paragraph. I am not certain what his attorney is trying to achieve, and without any context, I am in the dark.

5. In the comments on the side margin on page 2, Gary's attorney wants to define Effective Date, but Effective Date is already defined in paragraph 5 as a specific date. So, the change requested by Gary's attorney, if appropriate, should be made to paragraph 5. Otherwise there will be inconsistent provisions defining the Effective Date.

I agree.

6. In paragraph 3 there is an obligation to distribute Peggy's share of "accrued assets after the date of distribution" - what are "accrued assets"? Accrued where? This is too vague. The same is true for the obligation to distribute Peggy's share of any "additional assets" not reflected on the Statement of Account. This is also too vague - literally it means any additional assets not on that Statement of Account.

Yes. It is to preserve Peggy's right to 50% of any assets that may be subsequently discovered or any incremental gain or income on assets from the last accounting period.

7. I agree with the comment in paragraph 4 that the form of the releases should be attached to the agreement and incorporated therein. I would want this to make sure that there is no later argument about the content of the releases. I also might expressly state that full payment of all amounts to be paid under the Settlement Agreement is a condition precedent to the effectiveness of the releases. Also, it may also be wise to expressly state in the body of the releases that not only do the releases cover any claims by a party or his or her successors or assigns, but also the release cover derivative claims by devisees, distributes, beneficiaries, and successor fiduciaries making claims through the trusts or the Estate.

Good point. The release is now in the agreement and it is conditioned upon payment. In this estate and these trusts, there are no successor fiduciaries, other devisees, distributes, or beneficiaries.

9. Paragraph 6 provides that it is the intent to settle all disputes covering the subject matter of the Settlement Agreement - why limit this to "covering the subject matter of this Agreement." The releases provided for in the Settlement Agreement are general releases and paragraph 14 provides that "it is expressly agreed that the sole and exclusive purpose of settlement is to resolve all differences between the parties." There is no limitation there.

Revised.

10. Gary's attorney's comment that he wants paragraph 8 to state that it is binding on Peggy too, seems unnecessary. Peggy's rights to receive distributions and payments from the trusts and the estate are in her individual capacity and not in a representative capacity on behalf of another entity. Also, Peggy is signing the agreement and paragraph 18 already

provides that the agreement is binding on her. Moreover, Peggy is agreeing in paragraph 8(d) that Gary's signing of the agreement in his fiduciary capacity binds her as beneficiary and all successor fiduciaries.

That is correct.

11. Note in paragraph 9 that Florida law governs the Settlement Agreement and in paragraph 10 that Federal and state courts are the exclusive venue for any action brought in connection with the Settlement Agreement.

Yes.

12. Paragraph 14 requiring full cooperation in the event of a collateral attack by third parties on the Settlement Agreement is interesting. Full cooperation may require payment of costs and fees, including attorneys fees. I suspect there may be provisions in the will and trusts which indemnify Gary for his attorney fees and costs when acting in his fiduciary capacities. To the extent payments of those fees and costs come out of the trusts and the estate, one-half of those fees and costs are essentially being borne by Peggy. So in the event of a collateral attack, in addition to Peggy having to pay 100% of any costs and fees Peggy must occur to defend against it, it may be possible that Peggy will essentially bear one-half of Gary's costs and fees as well. This may be more theoretical than practical as one attorney could probably represent both Gary and Peggy in their defense of collateral attacks because their respective interests in any such collateral attacks will presumably coincide. But depending on what you are trying to achieve with your comments, it may be worth noting.

That is correct. It really is theoretical. I really can't imagine any third party attack in this proceeding. We could probably eliminate this paragraph.

13. Please note Gary's attorney's comment limiting the applicability of attorney's fees awards to disputes where distributions described in the Settlement Agreement are unreasonably withheld. First, this limitation seems unnecessary where fees are only awarded to the prevailing party to begin with. Second, I am not sure how likely it is that Peggy will have to sue Gary for anything other than unreasonable withholding of distributions; nor do I have any idea whether it is likely that Gary may try to sue Peggy for something covered by the general release provided for in the Settlement Agreement. If either of those events is possible, then why should Peggy agree to eliminate her right to fees? Also, to the extent that the parties have a reasonable dispute concerning the amount of a distribution that should be made to Peggy, the existence of a prevailing party fees provision may make the parties more amenable to resolving that difference outside of court. Depending on relative wealth of Peggy and Gary, not sure who has more of a strategic advantage to a prevailing party fee provision without the additional limitation proposed by Gary's lawyer.

The risk of bearing the adverse parties' attorney fees probably serves as a deterrent to both parties. Martin and I agree that the provision should not be limited as proposed by Ms. Dyce.
