Newsletter

Oregon Estate Planning and Administration Section Newsletter
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Legislation Report—As of July 1, 2005

Oregon Inheritance Tax Bills

A bill creating an Oregon QTIP election has been enacted. Two other inheritance tax bills are still under consideration.

HB 2469 – Creates an Oregon QTIP election for Oregon inheritance tax purposes. The executor can elect to treat a portion or all of a trust or other property interest as "Oregon special marital property." The election filed by the executor must include a consent signed by the surviving spouse. The rules follow the requirements for federal QTIP property and thus do not permit distributions to anyone other than the surviving spouse during the spouse's lifetime. If a trust provides for distributions to beneficiaries other than the spouse, then the other beneficiaries must sign an election and consent. Each living beneficiary must irrevocably release all rights to distributions during the spouse's lifetime and must sign on behalf of all unborn lineal descendants of the beneficiary. The Act provides forms for the consents required for beneficiaries and for the surviving spouse. The Act takes effect on the 91st day after the end of the regular Legislative session, but returns filed for decedents who died after January 1, 2002 can be amended to make the election.

HB 2542 – Changes the connection date between the Oregon inheritance tax and the federal estate tax to December 31, 2004. Passed the House.

HB 2629 – Imposes a tax on the taxable estate as defined under federal estate tax law. For deaths on or after January 1, 2007 and before January 1, 2009, the bill imposes a tax on taxable estates valued at $2 million or more, at rates ranging from 4% to 16%. For deaths on or after January 1, 2009, the tax equals 16% of the value of the taxable estate that exceeds $3.5 million. Passed the House 37-20 (3 excused). Referred to Revenue in the Senate.

Bills Related to Trust Law, Probate Administration, or Estate Planning

The Oregon Legislature has passed and the Governor has signed into law the following bills:

SB 275 – Enacts the Oregon Uniform Trust Code.

SB 277 – Modifies terminology in Uniform Transfers to Minors Act, changing the word "minor" to "beneficiary" throughout the Act and making other changes.

SB 278 – Identifies persons to act as personal representative for purposes relating to use and disclosure of personal information.

HB 2289 – Amends the small estate law to permit the filing of supplemental affidavits for the purpose of amending the original affidavit.

HB 2290 – Extends the time for filing annual accounts from 30 days after the anniversary of appointment to 60 days after the anniversary.

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In This Issue

Editor's Note: The two articles on Hendrickson v. Warburton, one by James R. Cartwright and one by Steven L. Griffith, were written to provide two views of the effect of the case on Oregon law. The authors take a point-counterpoint approach in the articles in order to convey two possible analyses of the law, but neither article should be read as that author's view of the correct approach. The two authors agree that both approaches may have merit.

Hendrickson's Estate v. Warburton is Not the Only Law That Governs Representative Actions, and Its Holding is Qualified

Other Sources of Authority for a Personal Representative's Lawsuit to Recover Property

The barrier posed by the Oregon Supreme Court's interpretation of ORS 114.305(19) in *Hendrickson v. Warburton*, 276 Or 989, 557 P2d 224 (1976), can be avoided when the personal representative can point to other authority for a recovery action. Several potential sources are at hand.

ORS 114.305(20). Subsection 20 of ORS 114.305 provides that

> "a personal representative, acting reasonably for the benefit of interested persons, is authorized to * * * [p]rosecute claims of the decedent including those for personal injury or wrongful death."

The obvious argument based on this language is that the statute must authorize more than merely claims for personal injury or wrongful death; otherwise, the words "including those" would be superfluous. "Claims of the decedent" can be understood fairly to include all claims of the decedent, because there is no persuasive reason why some tort claims but not others would be authorized, or why a personal representative may sue in tort but not in contract. This interpretation of subsection 20 finds support in the language of subsection 19, to which it is the complement. Whereas subsection 19 authorizes a personal representative to initiate litigation for "the protection of the estate," subsection 20 gives the personal representative authority to sue for its enhancement. The fact that subsection 20 was added to ORS 114.305 after the other subsections were weakens the argument, to which the other subsections are vulnerable, that the Oregon legislature in 1969 intended to exclude the powers of litigation found in sections 3-409 and 3-412 of the Uniform Probate Code.

ORS 114.305(26). Subsection 26 of ORS 114.305 provides even clearer authority for a recovery action if it applies. According to the subsection,

> "a personal representative, acting reasonably for the benefit of interested persons, is authorized to * * * [p]erform all other acts required or permitted by law or by the will of the decedent."

One may assume that an act is "permitted by law" if it is expressly authorized by statute. Under this reasoning, the acts of a personal representative permitted by law include prosecuting a lawsuit to recover the value of escheated assets of a dissolved partnership, corporation, or limited liability company, ORS 60.674, 63.674, 65.674; the defense expenses of a deceased corporate director, ORS 65.387, 65.394; and damages suffered as a result of physical or financial elder abuse, ORS 124.100.

Subsection 26 also incorporates by reference all lawful authority that the decedent's will gives to the personal representative. For this reason, the powers given to the personal representative by the decedent's will should be the first place counsel should look, in advising the personal representative of a solvent estate whether the client has authority to sue. If the will authorizes the personal representative to "prosecute all claims [of the decedent]" or "do all acts that might legally be done by an individual in absolute ownership and control of [the decedent's] property," as many wills do, analysis should go no further. ORS 114.305(26) would then authorize a lawsuit to recover property.

ORS 114.215. A third source of authority for a personal representative's recovery suit is the language of ORS 114.215. The statute usually is cited by parties that want to limit a personal representative's power to sue on behalf of a decedent. What subsection 1 of the statute takes away, however, subsection 2 to some degree restores. According to ORS 114.215(2),

> "*the rights of* * * * *devisees and heirs* to the property of [a decedent] are *subject to the restrictions and limitations expressed or implicit* in ORS chapters 111, 112, 113, 114, 115, 116 and 117 *to facilitate the prompt settlement of estates.*"

(Emphasis added.) Put differently, a personal representative's lawsuit to recover property may be justified if it substantially contributes to the prompt settlement of an estate. This is the first of several estate administrative considerations that may apply.

Administrative Exceptions to the *Hendrickson* Rule

Hendrickson is a more nuanced decision than it has been made out to be by those who cite it to oppose a personal representative's recovery suit. The actual holding of the case is:

> "[T]he personal representative of a decedent's estate has no right or power to file suit to set aside a deed to real property unless the remaining assets of the estate are insufficient to pay the claims of creditors *or unless such a suit is otherwise required or appropriate for the purposes of administration of the estate*."

276 Or at 997 (emphasis added). In support of the italicized phrase, the Oregon Supreme Court cites ORS 114.225, which authorizes a personal representative to take possession of property "in the possession of an heir or devisee." The opinion cites ORS 114.225, however, for a broader proposition; namely, that property held by anyone may be recovered by the personal representative if possession is "reasonably required for the purposes of administration."

What we have, then, is a rule with exceptions. ORS 114.305(19) has been interpreted to bar a recovery action by the personal representative of a solvent estate. In the same breath, however, the interpretation acknowledges that a representative action may be brought whenever it is "appropriate" for estate administration purposes. In the hands of an advocate, the latter proposition is an invitation to argument and a basis for future case law.

By way of illustration, the following questions, if answered in the affirmative, identify circumstances in which a probate court might decide that it is "appropriate" for the personal representative to assert a recovery claim, even though the estate was solvent:

- Is the personal representative's interest in the claim aligned with that of the estate beneficiaries? If the answer is affirmative, the risk that the personal representative may settle the claim for less than its worth or prosecute it beyond what is reasonable is reduced.
- Are the beneficiaries who would inherit the property unknown? The Hendrickson opinion assumes that the right to inherit is clear. This may not be the case, however, when the will is contested, unclear, or distributes property by lot or any formula that would be affected by the recovery of additional property. In circumstances such as these, there is a good administrative argument for a personal representative's recovery suit.
- Will the chance of recovery be reduced if the personal representative waits for a beneficiary to file suit? In many situations, the success of a claim depends on its prompt assertion. When there is an immediate risk of dissipation, transfer to a bona fide purchaser for value, or the approach of a statute of limitations, time is of the essence. In such situations, it is hard to believe that a personal representative is not exercising appropriate authority in filing a lawsuit and perhaps seeking provisional process. At a minimum, such acts may be necessary to preserve the ability of the real party in interest to continue with litigation if he or she chooses.
- Will the personal representative's prosecution of a claim have economies of scale, in the absence of which the beneficiaries' claim would simply not be asserted? The cost of litigation for a single beneficiary may exceed the likely recovery. A personal representative's suit to recover property filed on behalf of all beneficiaries, however, may be justified on economic grounds.
- Is there a risk that the estate may be insolvent? The Hendrickson opinion is written as if every estate is clearly either solvent or insolvent. For many estates, that assessment can only be made in hindsight. The value of assets and liabilities both can be hard to calculate. When the estate corpus is volatile stock, or there is a claim against the estate that exceeds the value of all assets, the mere risk of insolvency should argue for the personal representative's authority to bring suit.
- Would a lawsuit by the personal representative significantly reduce the time that the estate remains open? A strong public policy in favor of the prompt settlement of estates runs throughout the Oregon Probate Code. *See, e.g.,* ORS 113.075(3) (four months to contest will), 113.145(4) (30 days to provide information to heirs and devisees), 113.165 (60 days to file inventory), 114.215 (all rights subject to prompt settlement policy), 115.003 (three months and 30 days to identify and give notice to claimants), 115.005(2) (four months to present preferred estate claim), 115.005(4) (two years to present any estate claim). Determining the interested beneficiaries, appointing guardians ad litem for the young and unborn, coordinating discovery, and trial schedules for parties and lawyers all add to the time and expense of a lawsuit. In some cases a personal representative's claim may be a clearly superior vehicle for having a claim decided.

Other Policy Considerations

If the personal representative of a solvent estate is not the proper party to bring a lawsuit, does it follow that the personal

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Hendrickson's Estate v. Warburton Continues to be "Good Law"

The Duties of a Personal Representative

ORS 114.265 sets forth the general duties of a personal representative as follows:

> "A personal representative is a fiduciary who is under a general duty to and shall collect the income from property of the estate in the possession of the personal representative and preserve, settle and distribute the estate in accordance with the terms of the will and ORS chapters 111, 112, 113, 114, 115, 116 and 117 as expeditiously and with as little sacrifice of value as is reasonable under the circumstances."

The personal representative is therefore a fiduciary of the estate's beneficiaries. The representative's personal interest in the estate is limited to receipt of a statutorily established fee based on the value of the estate. See ORS 116.173 (formula for compensation of personal representative); *Kidney Association of Oregon, Inc. v. Ferguson*, 315 Or 135, 147, 843 P2d 442 (1992).

The Authority of a Personal Representative to Prosecute Tort Actions

Before his or her death, the decedent may have been the victim of a tort. Although on first glance it may appear that a personal representative has the authority to file and prosecute actions against third parties to pursue tort actions on behalf of the decedent or to bring assets into the estate, the personal representative's actual authority in such circumstances merits further examination.

A personal representative is authorized to file and prosecute a claim for personal injury or wrongful death. ORS 114.305(20); ORS 30.020. However, in other circumstances, the personal representative's authority to prosecute tort litigation arising from pre-mortem events is less clear because the beneficiaries, not the personal representatives, are the real parties in interest.

Title to all the decedent's personal and real property immediately vests in the heirs and devisees of the decedent upon his or her death. ORS 114.215(1) provides:

> "Upon the death of a decedent, title to the property of the decedent vests:
>
> "(a) In the absence of testamentary disposition, in the heirs of the decedent, subject to support of spouse and children, rights of creditors, administration and sale by the personal representative; or
>
> "(b) In the persons to whom it is devised by the will of the decedent, subject to support of spouse and children, rights of creditors, right of the surviving spouse to elect against the will, administration and sale by the personal representative."

In this same regard, there is no distinction between real and personal property. ORS 114.205. In other words, title to real and personal property of the decedent vests in the heirs or devisees upon the death of that decedent, subject to administration of the estate. Any "chose in action" in tort that survived the decedent would therefore be vested in or owned by the heirs or devisees of the decedent. Unlike personal injury or wrongful-death actions, the Oregon Probate Code contains no clear statutory framework for the prosecution of such actions.

The Oregon Probate Code, enacted in 1969, provides as follows:

> "Subject to the provisions of ORS 97.130 (2) and except as restricted or otherwise provided by the will of the decedent, a document of anatomical gift under ORS 97.952 or by court order, a personal representative, acting reasonably for the benefit of interested persons, is authorized to:
>
> * * * * *
>
> "(19) Prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of duties as personal representative."

ORS 114.305(19). It was only in 1977 that the Oregon Probate Code was amended to include the additional authority for the personal representative set forth in ORS 114.305(20); *i.e.*, to "[p]rosecute claims of the decedent including those for personal injury or wrongful death."

However, the scope of the personal representative's authority to prosecute claims arising from pre-mortem events must be viewed in light of the Oregon Supreme Court's decision in *Hendrickson v. Warburton*, 276 Or 989, 557 P2d 224 (1976).

Hendrickson v. Warburton

In *Hendrickson* the Oregon Supreme Court determined that ORS 114.305 did not authorize the personal representative to bring suit to set aside a deed executed by the

decedent, even though the decedent was then incompetent, despite the personal representative's duty to "'take possession' of estate property [and] or to prosecute a suit 'for protection of the estate'" because those duties are "limited by the more specific provisions of ORS 114.215 [relating to vesting of title] and 114.435." 276 Or at 997 (quoting ORS 114.225, 114.305(19)). The court noted that title to the decedent's property vested in his heirs, and that the personal representative has the power to maintain an action to set aside transactions *only if the suit is necessary to pay creditors*.

The supreme court's decision was reiterated and adhered to in *Ledford v. Yonkers*, 278 Or 37, 562 P2d 970 (1977). That case held that the personal representative was not authorized to bring suit to set aside a deed due to undue influence when the complaint did not allege that the estate was insolvent and that the property was needed to pay creditors' claims. Any such lawsuit would have to be brought by or on behalf of the heirs.

The 1977 Amendment to ORS 114.305

In 1977, the Oregon legislature added subsection 20 to ORS 114.305. On its face, the section seems to enlarge the personal representative's authority to prosecute actions, and could, arguably, include actions to recover assets when the estate is solvent. However, the legislative history indicates that the reason and purpose of this amendment was simply to clarify that personal representatives were authorized to file personal injury and wrongful-death actions without first obtaining specific authority from the probate court. The legislative history does include references to making the power of the personal representative as broad as possible and contains references to contract actions.

The legislative history contains no references to the Oregon Supreme Court's ruling in *Hendrickson*, and it seems clear that the amendment has nothing to do with the limitations set forth by the supreme court in that case. More importantly, nothing in subsection 20 or any other subsequent amendment to the Oregon Probate Code directly addresses the underlying rationale expressed by the supreme court in *Hendrickson*, *i.e.*, that

> "[b]ut without adoption of the specific powers which would have been conferred upon personal representatives by § 3-409 and § 3-412 of the proposed Uniform Probate Code, this subsection alone is not, in our opinion, sufficient to confer such powers upon personal representatives."

276 Or at 995. Those "specific powers" still have not been conferred upon personal representatives. As such, it could fairly be argued that a personal representative *of a solvent estate* may lack the authority to bring such tort actions.

This issue was again discussed in *Rennie v. Freeway Transport*, 55 Or App 1008, 640 P2d 704, *rev'd* on other grounds 294 Or 319 (1982). The court of appeals stated:

> "In addition, defendants contend the trial court erred in failing to dismiss or, alternatively, to strike plaintiff's complaint on the basis that it fails to state facts sufficient to constitute a claim in plaintiff, as administrator, because it fails to allege that the estate is insolvent, as required by *Ledford v. Yonkers*, 278 Or 37, 562 P2d 970 (1977), and *Hendrickson v. Warburton*, 276 Or 989, 557 P2d 224 (1976). Those cases hold that, because decedent's property descends to his heirs upon death, the authority of the representative of the estate to set aside previous transfers of property by the decedent to third parties is limited to those situations in which the estate needs the transferred property for the payment of claims of creditors or costs of administration."

55 Or App at 1014. No mention was made by the court of appeals of the 1977 amendments to ORS 114.305.

Recent Developments

In 1999 the Oregon Supreme Court decided that tortious interference with prospective inheritance is actionable under the tort of intentional interference with prospective economic advantage. *Allen v. Hall*, 328 Or 276, 974 P2d 199 (1999). In their discussion of the rights of beneficiaries to maintain actions in their own right, the supreme court stated:

> "Moreover, prospects of inheritance long have been recognized as interests that are worthy of common law protection. *See, e.g.*, *Hale v. Groce*, 304 Or 281, 744 P2d 1289 (1987) (permitting intended beneficiary of will to sue lawyer for failing to include gift to intended beneficiary in will as directed by testator); *Brown v. Hilleary*, 133 Or 26, 286 P 593 (1930) (decedent's heirs could sue to set aside deed that was procured by undue influence); *Groesbeck v. Groesbeck*, 49 Or 113, 88 P 870 (1907) (decedent's heirs permitted to set aside sale of property that was procured from testator before his death by fraud and undue influence)."

328 Or at 281-82.

By again acknowledging the beneficiaries' right to bring direct actions, the Oregon Supreme Court seems to have affirmed that the beneficiaries are the real parties in interest, which correspondingly ratifies the limited scope of the personal representative's authority, per *Hendrickson*.

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What's New

***Reynolds v. Schrock*, 197 Or App 564, 107 P3d 52 (2005)**

When I first started practicing law my father offered this advice: "Don't make your clients' problems your own." This case is an important example of how that can happen.

Reynolds and Schrock were involved in a joint venture over which a dispute arose. The attorney in this case represented Schrock in a settlement of the dispute. The settlement agreement allocated a lodge owned by the venture to Schrock, but gave Reynolds a security interest in the lodge to secure a contingent obligation Schrock owed to Reynolds. Reynolds did not record the security interest.

After the parties signed the agreement, the attorney advised Schrock that in spite of the fact that the lodge was subject to Reynolds' security interest under the agreement, the agreement did not expressly require that she retain the property. The attorney then assisted Schrock in selling the lodge and asked the escrow officer handling the sale to refrain from giving Reynolds any information about the sale. The sale occurred without Reynolds' knowledge.

Reynolds later discovered the sale and sued Schrock and the attorney for breach of fiduciary duty. The Oregon Court of Appeals first held that Schrock had a fiduciary duty to Reynolds as part of the winding up of the joint venture. The court then held that the attorney was jointly liable to Reynolds, not because he owed a fiduciary duty to Reynolds—he didn't—but because he aided Schrock in breaching her fiduciary duty to Reynolds.

The Oregon Court of Appeals relied on the Oregon Supreme Court's holding in *Granewich v. Harding*, 329 Or 47, 985 P2d 788 (1999). In *Granewich*, the supreme court held that a corporation's attorney could be jointly liable for the breach of the majority shareholders' fiduciary duty to the minority shareholders, if the attorney aids the majority shareholders in breaching that duty. The supreme court held that Restatement (Second) of Torts § 876 (1979) reflects existing Oregon law and provides the standards under which an attorney's conduct shall be evaluated. Under the Restatement, one is subject to liability for the tortious conduct of another if one

> "(a) does a tortious act in concert with the other or pursuant to a common design with him, or
>
> "(b) knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself, or
>
> "(c) gives substantial assistance to the other in accomplishing a tortious result and his own conduct, separately considered, constitutes a breach of duty to the third person."

Id.

In *Granewich*, the attorney represented the corporation and not the majority shareholders. In reaching its conclusion, the Oregon Supreme Court noted that an attorney-client relationship did not exist between the majority shareholders and the attorney, but stated, "[w]e do not suggest, by drawing this distinction, that it necessarily matters that the corporation, rather than [the majority shareholders], was the client." *Granewich*, 329 Or at 59 n 7.

The Oregon Court of Appeals noted that its holding has "serious implications" for attorneys. When does legal advice end and aiding and abetting begin? The court held that the Restatement rules should be given a strict and narrow construction. The court explained:

> "We understand subsection (a) to require an affirmative agreement between attorney and client to aid each other in what the attorney knows is a breach of the client's fiduciary duty to a third party. Thus, for example, an attorney's advice to the client outlining the range of options and the consequences that might flow from them does not amount to a 'common design' if, after hearing the advice, the client chooses on his or her own to engage in conduct that results in a breach of duty. Similarly, under subsection (b), 'substantial assistance' or 'encouragement' of the client's breach of fiduciary duty would consist of, for example, affirmative conduct that actually furthers the client's breach of fiduciary duty, done by the attorney with knowledge that he or she is furthering the breach."

197 Or App at 576.

Greed or simply overzealous representation may lead a lawyer into trouble. Often, however, it is the lawyer's desire to help a client achieve a result that the lawyer believes is justified, such as protecting assets from a drug-addicted beneficiary or ousting a bad partner, that causes the lawyer to assist the client in breaching a fiduciary duty. The lawyer's perception that his or her actions are justified under the circumstances does not shield the lawyer from liability for aiding and abetting a breach. The lawyer may advise the client on the consequences of certain actions, but must be careful not to assist the client if the client subsequently decides that the only way to solve the problem is to breach his or her fiduciary duty.

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***Legislation Report**, continued from page 1*

HB 2415 – Amends slayer statute to create a new category of persons who will not receive property after the death of a decedent. A person convicted of a felony for physical abuse under ORS 124.105 or financial abuse under ORS 124.110 will be an "abuser" if the death occurs within five years of the conviction. Abusers will be treated like slayers for purposes of the distribution of the decedent's property.

HB 2547 – Increases the real property limit for filing a small estate affidavit. The limit is increased from $90,000 to $150,000, and the limit for the total estate limit is increased from $140,000 to $200,000. The personal property limit is not increased.

HB 2632 – Modifies the interest rate payable on general pecuniary devises paid more than one year after appointment of the personal representative. The bill changes the rate from five percent to a floating rate, equal to the auction average rate on 91-day Treasury bills, to be adjusted each November 15 and May 15.

HB 2633 – Clarifies language regarding compensation of personal representatives in probate proceedings.

HB 2978 – Permits a court issuing a judgment of annulment, separation or dissolution of marriage to order the revocation of a designation of beneficiary on life insurance, certain retirement plans or certain investment and bank accounts, if the beneficiary is the spouse or a relative of the spouse of the owner of the asset and if the owner retained the power to revoke the designation.

The following bill has passed both houses of the Legislature and awaits the Governor's signature:

SB 392 – Amends slayer statute to provide that a slayer cannot receive property from an heir or devisee of a decedent, unless the heir or devisee specifically provides, in a will or other instrument executed after the death of the decedent, that the property should go to the slayer.

The following bills are still under consideration:

SB 106 – Requires firefighters and emergency medical technicians to report abuse of elderly persons or persons with disabilities. Modifies the definition of "abuse" to include wrongfully taking money or property from an elderly person or a person with disabilities or having sexual contact with a nonconsenting elderly person or person with disabilities or with someone considered incapable of consenting. Requires state or local officials to notify care facilities if the official knows that a person seeking admission is a predatory sex offender. Passed both Senate and House, but Senate has refused to concur in House amendments.

SB 356 – Requires claim by state for recovery of public assistance in small estate proceeding to be presented within four months after affidavit is filed. Referred to Senate Judiciary Committee.

SB 682 – Provides for self-settled spendthrift trusts. Amends the statutory rule against perpetuities to permit trusts to use a 1,000 year perpetuity period for personal property and mineral interests. Referred to Senate Judiciary Committee.

HB 2128 – Requires landlord to notify Department of State Lands within 48 hours of learning the death of a tenant who appears to have died intestate and without known heirs and applies the same notification requirement to a licensed funeral services practitioner. Assigned to Subcommittee on Civil Law in the House.

HB 2314 – Amends and clarifies duties of conservator following death of protected person. (See article in January issue of this newsletter). Passed by the House. Referred to Senate Judiciary Committee.

HB 3352 – Provides that a parent of an intestate decedent will not inherit if the decedent lacked capacity to make a will for at least five years before death and if the parent failed to provide support for the decedent for 10 years or more before the decedent reached age 18 (unless the parent adopted the child when the child was eight years old or older). Passed by the House.

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***Hendrickson v. Warburg**, continued from page 3*

representative also should not expend resources investigating to see whether such a claim exists? Beneficiaries—scattered, unsophisticated, unfamiliar with the decedent's affairs, oblivious to statutes of limitation, and unwilling or unable to hire their own lawyers—may well expect the personal representative to perform these functions. The law should follow the path of reason and experience.

Oregon law already trusts the personal representative with handling the defense of claims against an estate. There is no principled distinction, however, between the defense of a claim that may reduce an estate and the prosecution of a claim that may enhance it. In either case the diligence, zeal, and judgment of the personal representative are equally engaged, and the fortunes of the beneficiaries equally at risk.

In other contexts, Oregon law does not raise even an eyebrow over the prospect of fiduciary litigation. The role of a guardian ad litem is accepted. Trustees routinely decide whether to bring or defend trust claims. The probate of a will is nothing but a trust measured by the completion of the duties of a personal representative. With the convergence of the laws of wills and revocable living trusts, there is little reason to draw a distinction between a personal representative's responsibilities and those of trustees.

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CALENDAR OF SEMINARS & EVENTS

- July 21, 2005 (Sponsored by WSBA) **Advanced Probate: Special Issues in Administration**, Seattle, WA. Telephone: (800) 945-WSBA.
- July 21-22, 2005 (Sponsored by ALI-ABA) **Representing Estate and Trust Beneficiaries and Fiduciaries**, San Francisco, CA. Telephone: (800) CLE-NEWS.
- July 27-30, 2005 (Sponsored by ALI-ABA) **Modern Real Estate Transactions**, Boston, MA. Telephone: (800) CLE-NEWS.
- August 25-26, 2005 (Sponsored by ALI-ABA) **International Trust and Estate Planning**, Seattle, WA. Telephone: (800) CLE-NEWS.
- September 7, 2005 (Sponsored by WSBA) **Real Estate Litigation**, Seattle, WA. Telephone: (800) 945-WSBA.
- September, 8-9, 2005 (Sponsored by ALI-ABA) **Sophisticated Estate Planning Techniques**, Boston, MA (Fairmont Copley Plaza). Telephone: (800) CLE-NEWS.
- September 12-13, 2005 (Sponsored by PLI) **36th Annual Estate Planning Institute**, New York, NY. Telephone: (800) 260-4PLI.
- September 22-24, 2005 (Sponsored by ALI-ABA) **Creative Tax Planning for Real Estate Transactions**, San Francisco, CA. Telephone: (800) CLE-NEWS.
- October 27-28, 2005 (Sponsored by PLI) **36th Annual Estate Planning Institute**, PLI California Center, San Francisco, CA. Telephone: (800) 260-4PLI.
- November 7-8, 2005 (Sponsored by WSBA) **50th Anniversary Estate Planning Seminar**, Seattle, WA. Telephone: (800) 945-WSBA.
- November 14-18, 2005 (Sponsored by ALI-ABA) **Planning Techniques for Large Estates** (limited enrollment), San Francisco, CA. Telephone: (800) CLE-NEWS.
- November 17-19, 2005 (Sponsored by ALI-ABA) **Representing the Growing Business: Tax, Corporate, Securities and Accounting Issues**, Scottsdale, AZ. Telephone: (800) CLE-NEWS.

***Save the Date:* November 4, 2005**

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