



Tools to Confront Power with Power

November 18, 2015
Via Email

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Dear Messrs Cryan, Fitschen, Achleitner:

Mr. Keyko's letter to me dated October 30, 2015 (Exhibit #1) on behalf of each of you and Deutsche Bank does more to implicate the bank, White & Case and Pillsbury Winthrop in a long saga of corruption than it does to exonerate them. It is clear that for many years the corporate culture at Deutsche Bank and Bankers Trust Company, while relying heavily on the advice and activities of White & Case/Winthrop Rutherford and Pillsbury Winthrop/David Keyko, remained deeply corrupt and that corruption continues to this day.

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In his letter, Mr. Keyko directed me to send any further correspondence to him. But why would I do that when it's you Mr. Cryan, Mr. Fitschen and Mr. Achleitner and the Management and Supervisory Boards you head that are ultimately responsible and have the power to rectify criminal, immoral and dishonest behavior involving any department in the bank and the attorneys it hires. Are you all trying to avoid accountability by hiding behind the very attorneys who have continued to be a part of the problem rather than part of the solution?

Mr. Keyko's efforts to stonewall answering legitimate questions to shield each of you, the bank and especially himself from accountability are doomed to fail. If you refuse to adequately respond to my probing questions, it indicates further that the bank and the lawyers it assigned to handle the Suzanne McCormick case are guilty of crimes against Mrs. McCormick and the plundering of the Edmund J. McCormick Estate.

If question #1 is too hard for Mr. Keyko to answer, perhaps we can start at the bottom by answering question #17 and work our way up. Question #17 asks: How do you explain the disturbing contents of a confidential Bankers Trust Company "Market Segmentation Analysis Report" spotlighting its **"milk, exit and ignore"** business strategy?...Does this disturbing report reflect the policies and practices of Deutsche Bank's Global Asset Management today and which union and public funds [and estates] since 1998 were categorized as **"milk, exit and ignore?"**

I gave you the opportunity to correct anything in my October 21, 2015 letter (Exhibit A) referring to Deutsche Bank, Bankers Trust Company, Bankers Trust Company of New York, White & Case and/or Pillsbury Winthrop Shaw Pittman and their respective attorneys that you believe is inaccurate. Mr. Keyko's effort to whitewash all allegations, accusations, statements of fact, etc. with the statement: "Suffice it to say, Deutsche Bank categorically denies the allegations" is a feeble attempt to avoid honestly responding to questions knowing that truthful answers will only further indict the bank and its lawyers. For Mr. Keyko, who our investigation strongly suggests has been directly involved in milking the estate to write: "the estate does not have sufficient funds to reimburse the Bank fully for its substantial expenses in defending the executors' actions against Mrs. McCormick's allegations during the past 17 years," is the height of hypocrisy. Perhaps we can interest reporters that we have dealt with in the past -- at such publications as the *Wall Street Journal*, *New York Times*, *American Banker*, *Corporate Crime Reporter*, *Reuters*, *Die Zeit*, *Der Spiegel* and others -- to seek answers to the many legitimate questions we have raised.

Mr. Cryan, Mr. Fitschen and Mr. Achleitner, if you and others in the upper echelon of Deutsche Bank plan to hunker down, bury your heads in the sand and hope the McCormick issue will go away, you are sadly mistaken. Our public campaign resulting from your failure to act responsibly in the Suzanne McCormick case may very well lead to other Deutsche Bank clients realizing that they too were victims of fraud and legal malpractice and take action against the bank and its law firms. If the bank refuses to assign by Monday, November 30, 2015, competent, honest representatives with the authority to meet with us in New York City by Monday, December 7, 2015 to fairly and promptly resolve the years of injustice done by Deutsche Bank to Mrs. McCormick, our Stop Estate Fraud/Cleanup Deutsche Bank Campaign will go into action.

Mr. Keyko erroneously stated in his October 30, 2015 letter (Exhibit #1) sent to me and copied to Mrs. Suzanne V. McCormick that: "Mrs. McCormick's allegations regarding her late husband's estate have all been resolved by the courts in favor of Deutsche Bank and the other three executors." For that reason and to set the record straight, I requested a brief response from Mrs. McCormick and her assistant Patrick Hanley to include in this letter. The following is their response:

The cornerstone of this entire matter is effectively the Will of Edmund J. McCormick dated November 20, 1985 that was drafted by the law firm of **White & Case** (Exhibit #2 - Copy of three relevant pages that list five nominated Executors including **Bankers Trust Company**).

Upon Mr. McCormick's death on November 27, 1988, **White & Case**, the Estate attorney and **Bankers Trust Company** filed the Will for probate and applied for the Permanent Letters Testamentary ("Letters of Authority"). They were issued by the Surrogate's Court on January 25, 1989 to four of the nominated Executors and **Bankers Trust Company of New York** (Exhibit #3 - Copy of the Permanent Letters Testamentary issued to the widow, Suzanne V. McCormick, and to **Bankers Trust Company of New York**, a fraudulent entity not nominated in the Will and which did not become a legal entity until over ten years later on September 7, 1999). This was the inception of the **Fraud on the Court** in this matter perpetrated by both the law firm of **White & Case and Bankers Trust Company, its "Enduring Client" since 1903** (Exhibit #4 - Exemplified Copy of the Permanent Letters Testamentary Certified by the Surrogate Judge dated April 10, 1989).

Subsequently, as part of the shell game involving the **Bankers Trust/Deutsche Bank** names, the Surrogate Court has become involved in aiding and abetting in the continuing and on-going cover-up and fraud not only on the Court but also now by the Surrogate's Court itself. A copy of Certificate of Appointment of Executors dated November 12, 2015 (Exhibit #5) further shows the continuing fraudulent "Pattern and Practice" of the other documents in that it lists "**Deutsche Bank Trust Company Americas f/k/a Bankers Trust Co. of NY.**" As you know, **Bankers Trust Company of NY** as listed on the Permanent Letters Testamentary (Exhibits 3 & 4) was never known as **Deutsche Bank Trust Company Americas** and was formerly only known as **Bankers Trust Company** which both now bear the "Scarlet" letters of "Federal Felons" since July 27, 1999 (*USA v. Bankers Trust Company 99-cr-250 - SDNY*)!" The nominated executor **Bankers Trust Company** (now **Deutsche Bank Trust Company Americas** since April 2002) was never appointed by the Surrogate's Court and has never had any legal standing in the Estate of Edmund J. McCormick. Furthermore, they are federal felons and can never be an Executor! All the attorneys that have any knowledge of any of these matters are subject to the "Misprision of Felony" situation.

It should also be noted that White & Case abandoned the McCormick Estate shortly (within weeks) after the issuance of the Permanent Letters Testamentary dated January 25, 1989, when they filed a Petition on behalf of **Bankers Trust Company** for the repayment of a loan (\$500,000 plus) Mr. McCormick owed **Bankers Trust Company** thereby leaving the Estate devoid of any legal counsel from that point forward.

Bankers Trust Company (William Wilkie) fraudulently facilitated the payment of \$250,000 (May 1996) over Mrs. McCormick's objections to **White & Case** for alleged legal services provided to the Estate. Recently, when knowledge of this criminal fraud was revealed by Mrs. McCormick, **White & Case** abandoned their position as a creditor of the Estate.

Enclosed is a salient Court Decision from Judge Karla Moskowitz dated August 12, 2003 (Exhibit #6) as a result of her examining the sealed records regarding the Substitution of Fiduciary from the federal felon **Bankers Trust Company to the**

non-felon Bankers Trust Company of New York revealing that the Estate of Edmund J. McCormick **was not 'Substituted' or transferred to Bankers Trust Company of New York, the non-felon.** Note felons are prohibited from acting in any fiduciary capacity. Mr. Keyko has asserted in his letter (Exhibit # 1) that all the court decisions have been in Deutsche Bank's favor. Judge Moskowitz's decision is but one example of a case not in Deutsche Bank's favor.

Mr. Keyko currently has his name listed on court documents as the Estate Attorney which he is not and never has been! He and his firm have been and continue to represent the illegal and fraudulent Executor and sentenced federal felon **Bankers Trust Company, (now Deutsche Bank Trust Company Americas since April 2002)**, as a part of the cover-up in the ongoing fraud that initially began as a fraud on the Surrogate Court thereby rendering all the litigation null and void from day one.

We hereby certify all Exhibits attached are true and correct copies of said documents.

Sincerely,



Ray Rogers
Director



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cc: Suzanne McCormick



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October 21, 2015

Via Email

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Dear Messrs. Cryan, Fitschen, Achleitner:

Mrs. Suzanne McCormick, concert pianist, legal executrix and principal beneficiary, retained Corporate Campaign, Inc. to investigate what she believes is the theft of much of the estate of her late husband Edmund J. McCormick which was left to her and other family members. Mr. McCormick, whose management consulting company, McCormick & Co., ranked among the top fifty in the country and listed American Express, Ford Motor,

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A June 17, 2015 letter from Culinary Workers Union Local 226 to the Nevada Gaming Commission and Gaming Control Board raising issue with felon Deutsche Bank being allowed to hold significant ownership stakes in casinos stated:

Britain's Financial Conduct Authority said of the banks then already implicated in rate rigging, Deutsche Bank was the first that was also fined for lying about it. Reuters reported on April 23, 2015, that the FCA found Deutsche Bank "stood out for the scale of the manipulation, the number of staff involved and for its lack of honesty and openness once the wrongdoing was under investigation."

According to an April 23, 2015 *New York Times* report, "The authorities also denounced the bank for lax oversight of traders and a failure to respond to warning signs of misconduct. The bank, authorities said, also dragged its feet in providing information, taking two years to provide audio recordings requested by investigators and accidentally destroying some evidence." Deutsche Bank had also claimed to the FCA in September 2013 that it was restricted from sharing a preliminary report prepared by German regulator BaFin into the bank's role in interbank rate rigging when it turned out the bank had recent internal advice to the contrary. BaFin has said it never bars a German bank from sharing a report with a foreign regulator.

With respect to Deutsche Bank "accidentally destroying some evidence," there seems to be a "Pattern and Practice" of the destruction of evidence since this is not the first time of this occurrence in Deutsche Bank's history since acquiring Bankers Trust Company.

- Deutsche Bank's Co-CEO Juergen Fitschen and former CEOs Rolf Breuer and Josef Ackermann are presently on trial in Germany for allegedly committing perjury in court in an effort to avoid paying damages resulting from the financial collapse of the Kirch Group's media empire. According to **Reuters** (2/20/14), the Kirch family argued that the bank's former CEO Rolf Breuer led a fraudulent scheme by the bank to force Leo Kirch into bankruptcy so that the bank could reap "hefty fees helping the group to restructure." Deutsche Bank finally settled the case in 2014 reportedly for about \$1.27 billion plus Kirch's very substantial legal fees.

Deutsche Welle reported (4/27/15), "Germany's influential weekly *Die Zeit* said the trial raised questions that went deeper than Fitschen's own culpability. Jurors would establish whether Deutsche Bank functioned as a normal financial institution or a criminal organization."

- **Corporate Crime Reporter** (6/1/15) reported that Deutsche Bank will pay \$55 million to settle charges that the bank "filed financial reports during the height of the financial crisis that failed to take into account a material risk for potential losses estimated to be in the billions of dollars." SEC's Division of Enforcement Director Andrew Ceresney stated, "Deutsche Bank failed to make reasonable judgments when valuing its positions and lacked robust internal controls over financial reporting."

- **Forbes.com** (4/15/15) reported that the Dubai Financial Services Authority (DFSA) imposed its largest fine ever when it fined Deutsche for "inadequate controls over money

laundering." The DFSA gave as reasons for the record fine, "serious contraventions...including misleading the DFSA."

- **Reuters** (12/20/13) reported that Deutsche Bank "will pay \$1.9 billion to settle claims that it defrauded two U.S. government-controlled companies in the sale of mortgaged-backed securities before the 2008 financial crisis." The story described it as "the second-largest regulatory settlement over claims banks engaged in fraud in packaging and selling mortgaged-backed securities..."
- **Los Angeles Times** (5/5/11) reported that Los Angeles filed a civil lawsuit against Deutsche Bank claiming the bank is one of the biggest "slumlords" in the city. Prosecutors found evidence that the bank "illegally evicted some tenants, let others live in squalor and allowed hundreds of unoccupied properties to turn into graffiti-scarred dens for squatters, gang members and other criminals."
- **Bloomberg Business** (5/13/15) reported that Deutsche Bank "is among a group of banks accused of colluding to prevent exchanges from entering the credit default swaps business from 2006 to 2009. The EU's swaps case added another potential scandal for the banking industry..."
- **Financial Times** (7/15/15) reported that Deutsche Bank is being investigated over a possible multi-billion dollar money laundering scheme for Russian clients in Moscow involving trades carried out over a period of four years ending in early 2015.
- **Bloomberg Business** (7/27/15) reported the co-head of Deutsche Bank's Asian Corporate Finance was placed on leave earlier this year while investigations continue over questionable fund transfers to Deutsche Bank's Securities joint venture in China.
- **Agence France-Presse** (8/13/15) reported that German prosecutors charged one former and seven current Deutsche Bank employees with evasion of taxes on trading carbon emission certificates. "The scheme is estimated to have cost Germany around 220 million euros (\$244 million) in unpaid taxes via the purchase and sale of carbon emission certificates abroad."
- **Reuters** (9/24/15) reported that a federal judge refused to dismiss a U.S. government lawsuit charging Deutsche Bank with \$190 million in tax fraud liabilities due the U.S. Treasury from a scheme in 2000 using shell companies to evade paying taxes.
- **Reuters** (5/22/14) reported that Deutsche Bank faces "around 1,000 major lawsuits." Klaus Neiding, spokesperson for private investors, commented that, "Deutsche Bank today is a huge law office with banking operations attached." Others describe the symbiotic relationship between Deutsche Bank and its primary law firms as "a decades long cesspool of corruption." In June 2015, numerous news outlets reporting on the resignation of Deutsche Bank's Co-CEO said the bank is "mired in about 6,000 different litigation cases."
- **MarketWatch** (10/9/15) reported on Deutsche Bank's disenchantment with Bankers Trust Company particularly around its derivatives marketing scandal uncovered in the 1990's, which has continued to affect the Bank's profitability. Large corporate clients like Procter & Gamble successfully sued Bankers Trust Company in federal court for misleading clients and failing to disclose risks of its derivatives trading. The client's key evidence was found in reviewing 300,000 pages of Bankers Trust documents and the discovery of 6,500

secret tape recordings between brokers at Bankers Trust where "Bankers Trust traders were heard saying, 'We set 'em up.'"

Procter & Gamble charged Bankers Trust "Engaged in a pervasive pattern of fraud spanning a number of years and involving a number of victims." Charges, among other things, included: "Fraud was so pervasive and institutionalized that Bankers Trust employees used the acronym 'ROF'-- short for rip-off factor-- to describe one method of fleecing clients;" Customers were induced "to purchase complex derivative deals that produced high profits for the bank and often big losses for many of its clients;" and the bank "Misrepresented to clients the pricing, current value and risks of the products it sold."

• **Reuters** (5/17/15) reported that Congresswoman Maxine Waters (CA), Financial Services Committee Ranking Member, is calling for a public hearing to vet a request by Deutsche Bank to continue managing retirement (*ERISA*) accounts. "I'm troubled to see yet another bank plead guilty to criminal charges only to turn around and ask federal regulators to allow it to continue doing business as if it has done nothing wrong," Ms. Waters said.

Our investigations into the years of mishandling the Edmund J. McCormick Estate is revealing what appears to be a sordid history of legal malpractice, conflicts of interest, racketeering, fraud and theft and have led us to ask: Are White & Case, Pillsbury Winthrop, Bankers Trust Company (known since April 2002 as Deutsche Bank Trust Company Americas), Bankers Trust Company of New York (known since April 2002 as Deutsche Bank Trust Company New York) and Deutsche Bank synonymous with one big overlapping criminal syndicate?

Mrs. McCormick is adamant in pointing the finger at Deutsche Bank executives along with their attorneys at White & Case and Pillsbury Winthrop. She says, **"Deutsche Bank and its lawyers at White & Case and Pillsbury Winthrop have no shame in destroying families and ruining people's lives as they do. They have stolen 27 years of my life as a widow along with many other things and I demand justice and to be made whole. I certainly do not want another widow to have to endure what I have been subjected to by this bank and its predatory lawyers. I believe the only way to stop this madness is to publicly expose, heavily fine and put these despicable, rapacious people in prison for the misery they have spread."**

Prior to Edmund J. McCormick's passing in 1988, Bankers Trust Company and White & Case lawyers who drafted his Will in 1985 assured Mr. McCormick and his wife Suzanne that they, along with the other executors, could administer the sizable estate and provide very well for Mrs. McCormick pursuant to his expressed wishes.

Winthrop Rutherford, Jr., head of the Trust & Estate Department at White & Case who had drafted the Will, informed four of Mrs. McCormick's stepchildren at the time of Mr. McCormick's Funeral that their father's estate was worth between \$45-\$47 million. It should be noted that Mr. Rutherford shamelessly billed the estate for attending the funeral. Mr. Rutherford later told Mrs. McCormick "There is so much money in this Estate, it will never run out of money." When Mr. Rutherford was asked during a teleconference (circa 1995) why the Estate filing with the IRS only claimed a value of \$17 million, he stated that it was lowered for "tax purposes," which, knowing the facts doesn't make sense!

Nearly 27 years after Mr. McCormick's death, Mrs. McCormick finds herself in difficult economic straits, not because of her own doing, but apparently because of the pattern and practice of intentional wrongdoing and unethical and criminal actions of Deutsche Bank/Bankers Trust Company, White & Case and Pillsbury Winthrop causing them to fail in meeting their fiduciary duties. Further, the record will show that Bankers Trust Company became a convicted U.S. Federal Felon (S.D.N.Y. -99-cr-250, U.S.A. v. Bankers Trust Company) on July 26, 1999 shortly after Deutsche Bank acquired Bankers Trust Company on June 4, 1999. A felony is forever and felons are legally prohibited from acting in any fiduciary capacity! The public should know that before Deutsche Bank acquired Bankers Trust Company, Deutsche Bank's criminal liability was capped at \$19.1 million thus leaving it up to the American taxpayer to foot the bill associated with further criminal liabilities.

"David Keyko, of Pillsbury Winthrop, Bankers Trust Company/Deutsche Bank Trust Company Americas' lawyer, has engaged in deceitful 'Sharp Practices' and has not worked in 'Good Faith' for some 19-20 years on administering the McCormick Estate. White & Case, which abandoned the Estate in early 1989 to solely represent Bankers Trust Company but continued to fraudulently bill the Estate, and the Pillsbury Winthrop law firm think that the Estate is their annuity and the widow should receive nothing after discovering their criminal acts," commented Patrick Hanley, Mrs. McCormick's assistant.

How does Deutsche Bank and its aforementioned law firms involved in handling the administration of Mr. McCormick's estate explain the following?:

1. Why did the White & Case law firm and Bankers Trust Company fraudulently and illegally list **Bankers Trust Company of New York** in place of the Professional Fiduciary Bankers Trust Company nominated in the Will on the Permanent Letters of Testamentary issued by the Surrogate Court on January 25, 1989, when as you know Bankers Trust Company of New York did not become a legal entity until September 7, 1999, over 10 years after the issuance of the Permanent Letters of Testamentary? Please do not suggest that the addition "of New York" to the Bankers Trust Company name refers to either a "geographical location" or is a typographical error that was never discovered or corrected. As you know, the named legal entity has to be exactly as nominated in the Will.

How can Bankers Trust Company/Deutsche Bank Trust Company operate as a fiduciary since it is a convicted/sentenced federal felon? How can the U.S. Labor Department grant any exemption to Bankers Trust Company, et al. to manage ERISA pension funds as was reported in the *Federal Register* on July 27, 1999? Although a very specific "Certificate of Relief From Disabilities" was issued by the New York State Parole Board to Bankers Trust Company on or about 12/2/99 to mitigate federal felonies, please do not assert that this "Certificate" exempts the Bank since, as any first year law student knows, the State of New York cannot "pardon" any federal felon and a federal felon, as you know, is prohibited from acting in any fiduciary capacity much less as a "Professional Fiduciary" of Trusts and Estates.

2. How do you explain the apparent conflict of interest when Mr. Rutherford claims that White & Case administered the McCormick Estate in a fiduciary capacity until 1996 since shortly after the "Permanent Letters Testamentary" were issued on 1/25/89 White & Case abandoned the Estate as its attorney to represent its "enduring client" Bankers Trust Company as it filed motion papers in Westchester County Surrogate Court to recoup more

than \$500,000 from Mr. McCormick's Estate that Mr. McCormick's consulting company owed on its line of credit with the bank? Prior to abandoning the Estate, White & Case legitimately billed the Estate for its services but also billed the Estate after abandonment for more than \$600,000 in the 1996 "Final Accounting."

How do you explain the William Wilkie, Managing Director of the Trust Department of Bankers Trust Company, fiasco? In 1996, Mr. Wilkie initiated a campaign to facilitate the payment of \$250,000 as partial payment of a bill for alleged Estate legal fees in excess of \$600,000 to White & Case over the objections of Mrs. McCormick. Later it was learned that Mr. Wilkie committed perjury in a sworn deposition on April 30, 1998 when he denied the existence of a Bankers Trust Company "Trust Manual" dated April 1997. In 2001 during a deposition relating to another Trust, Mr. Wilkie confirmed the existence of the Trust Manual and immediately thereafter retired from the bank.

White & Case's history shows that some of its partners and the firm's integrity are not above reproach. *Forbes'* (7/24/2000) article titled "White Shoes, Black Shirts" stated: "A SCATHING 215-PAGE REPORT from the U.S. Department of Justice sets out how one of the world's leading law firms, Wall Street's White & Case... played a role in helping to conceal fraud, forgery and other crimes..." *The Lawyer* (1/31/14) reported that a judge upheld an application to debar White & Case from representing Ukrainian industrialist Victor Pinchuk in his \$2 billion High Court battle against Gennady Bogolyubov and Igor Kolomoisky over conflicts of interest. White & Case, which had earlier concluded internally there was no conflict of interest, to save face claimed that it has "an exemplary record in detecting and avoiding conflicts of interest..."

- 3.** How do you explain that while Mr. McCormick's Will clearly states that Mrs. McCormick, one month after his passing, was to receive \$500,000 but merely received a small nominal amount even though the Estate had approximately \$7 million liquid in stocks, bonds and cash?
- 4.** How do you explain that Mr. McCormick's Will calls for Mrs. McCormick to receive up to \$50,000 per year beginning in 1988 from Mr. McCormick's Residuary Estate, yet she has never received any such payments even though she had, following the Will's and White & Case's instructions, requested those payments each year from 1988 until she learned in 2005 that White & Case had actually abandoned the Estate when it chose to represent its enduring client Bankers Trust Company in all matters pertaining to the Estate?
- 5.** How do you explain Deutsche Bank now seizing dominion of approximately \$600,000 that is presently sitting in two accounts effectively making no income of any nature for the Estate for over 20 years? Why hasn't the widow received any interest much less any of these Estate monies?
- 6.** What happened to the \$1.5 million that disappeared like magic while Mr. McCormick was in a coma before his death? It is not listed in the alleged "Final Accounting" in 1996. It was in a Bankers Trust Company account closed on November 23, 1988. Mr. McCormick died on November 27!
- 7.** How do you explain that while picketing outside Deutsche Bank in New York City, a whistleblower inside the bank tipped off Mrs. McCormick to look for an "AT&T" \$250,000 bond in the Illinois Unclaimed Funds in the name of her husband, Edmund J. McCormick? When it was checked, it was found that the bond had been transferred to New York State

Abandoned Funds! There is evidence to the effect that an attorney at Deutsche Bank in 2005 surreptitiously made overt attempts to secure this \$250,000 Bond without informing the Executrix Suzanne McCormick whatsoever. Under the circumstances, one has to question whether the Bank's intent was to seize dominion of this bond for their own coffers, further betraying and abandoning the Estate of Edmund J. McCormick. The \$250,000 is not listed in the apparently fraudulent "Final Accounting."

8. Why didn't widow Suzanne McCormick receive the complete Marital Deduction of approximately \$11 million from the Fraudulent Executor Bankers Trust Company? She only received assets [marital home, co-op and English art collection] that White & Case asserted had a value of \$4.5 million. What happened to the rest of the marital deduction?

9. Why were no IRS Partnership Tax Returns on the "real properties" filed before the date of Mr. McCormick's death? How do you respond to Mrs. McCormick's assistant Patrick Hanley's assertion that he was informed by a bank insider that no Partnership Tax Returns had been filed with the IRS? Bankers Trust Company and its law firm White & Case provided copies of "tax returns" that turned out to be fraudulent pursuant to a letter from the IRS confirming that no IRS Partnership Tax Returns on the real property were filed before the date of death! The documentary evidence shows that the Bank, its law firm White & Case and the CPA firm (of Herman Markowitz, executor) backdated copies of alleged IRS Partnership Tax Returns.

How do you explain that monies transferred from the Estate to Edmund McCormick, Jr. (property manager) to pay municipal assessments or real estate taxes, was never used to pay those assessments or taxes and the Estate therefore paid a second time for the same thing without holding Co-Executor Edmund McCormick, Jr. accountable for embezzlement of those funds? When White & Case and Bankers Trust Company were asked to subpoena Edmund McCormick, Jr.'s accounting books for the real property, Win Rutherford responded: "We don't want to do this because the judge doesn't like these kind of problems." Edmund McCormick, Jr. reported the real estate books were burned and claimed he was a partner on the real properties.

10. Where is the accounting for the IRS "Joint" Personal Tax Refund checks for years prior to the date of Mr. McCormick's death that White and Case and Bankers Trust Company conned Mrs. McCormick to turn over to them, promising her they would give her her "share?" One of these checks is not even listed in the accounting! The "Joint" Personal Tax Refund checks were fraudulently listed in the alleged "Final Accounting" (1996) as individual IRS refund checks.

11. What happened to the insurance policies and other assets of Edmund McCormick's consulting firm, McCormick & Co., left in his Will to his wife Suzanne? Why did Win Rutherford, Jr. arrange a transfer of the stock held by McCormick & Co. to Mrs. McCormick's estranged son Edmund McCormick, Jr. for one dollar? What happened to Mrs. McCormick's personal savings of \$296,000 used to help Bankers Trust Company and White & Case arrange the financials? They stated she would get the money back.

12. Who opened the McCormick & Co. safe deposit box and appropriated its contents left to Mrs. McCormick without IRS supervision?

13. Why did attorney David Keyko et al. sabotage settlement discussions in 1999 initiated by Deutsche Bank North America's General Counsel Troland Link? When Mrs. McCormick

sent a member of her church who said he knew Rolf Breuer to several Annual Shareowner Meetings in Frankfurt with a proposal that contained a detailed 190-page analysis to open "Good Faith" settlement talks, he was stonewalled in Germany as he was in the U.S. Nevertheless, she made another attempt (circa 2012/2013) via an experienced settlement lawyer, Samuel Gilbert, who met with Mr. Keyko but was frustrated by Mr. Keyko's intransigency. Mr. Gilbert was told by Mr. Keyko that under no circumstances would he meet with Mrs. McCormick or her assistant Mr. Hanley. Does Mr. Keyko's intransigency result from orders from federal felon Bankers Trust Company/Deutsche Bank Trust Company Americas and White & Case.

Mr. Keyko claims, in his reply to Mrs. McCormick's request for an extension to file objections to the latest "Supplemental Filing," that they tried to settle with Mrs. McCormick on numerous occasions but she refused to settle. Why has Mr. Keyko never delineated the dates of the alleged attempts to settle and the proposed settlement amounts and will he now provide such an accounting?

Why, when speaking to Deutsche Bank Trust Officer attorney Brandi Goldenberg and asking to speak directly to a Risk Manager or Compliance Officer, Ms. Goldenberg refused the request and said she would handle any issues that Mrs. McCormick had. Was she receiving orders from Mr. Keyko on how to respond to such requests from a Legal Executor?

Why has Mr. Gilbert stated in several letters that Mr. Keyko put his name on the Service List on a court decision and took off the name of Jason Bogli, Mrs. McCormick's attorney of record since 2004? Why did Mr. Keyko prepare a Certificate of Fiduciary (bearing his name that allegedly lists Estate executors) for the Surrogate Court that fraudulently lists **Deutsche Bank Trust Company Americas (formerly known as Bankers Trust Company of New York) when he knew fully well that Deutsche Bank Trust Company Americas was only known as Bankers Trust Company? He also knew that Bankers Trust Company (nominated legally in the Will) was not listed on the Permanent Letters Testamentary (still in effect) issued by the Westchester County Surrogate Court on 1-25-89.**

14. Where is the court docket/minutes record for the Estate of Edmund J. McCormick?

15. Why are portions of the Estate's alleged accounting reports redacted and who caused those redactions to be made? By what right does Mr. Keyko bill the Estate for legal invoices for his law firm, Pillsbury Winthrop, in the representation of the fraudulent Executor and federal felon Bankers Trust Company now legally known as Deutsche Bank Trust Company Americas without documentation of the time sheets and reasons for the billings?

16. Is there any legitimate detailed, full accounting as to the contents and dispositions of all monies and other assets related to the Estate? Please do not suggest that the "1996 Final Accounting" and the recent "Final Supplemental Accounting," are detailed or legitimate.

17. How do you explain the disturbing contents of a confidential Bankers Trust Company "Market Segmentation Analysis Report" spotlighting its "**milk, exit and ignore**" **business strategy**?

Bankers Trust issued a confidential *Market Segmentation Analysis Report* dated April 13, 1998 for its Weekly GIS Executive Staff Meeting. The term Global Institutional Sales (GIS), which was changed to Global Asset Management, referred to the "group that sell investment management and other ancillary services to Institutional clients; i.e., corporations, endowments & foundations, taft hartley (unions) and public funds (states, counties, cities, water and school districts, airport authorities, transportation agencies, etc.)."

The report stated: "GIS clients and segments have been categorized into three different categories based upon current IBBT (Income Before Bonuses and Taxes) per client potential profitability to Bankers Trust: 'invest and grow' segments; 'test and improve' segments; and '**milk, exit and ignore**' segments...There will be two levels of sales and services depending upon the size and attractiveness of the client rather than providing the same level of services to all clients."

The "Confidential Market Segmentation Analysis Memo" stated "BT wishes to retain and offer exemplary services to only those clients whose annual revenues to BT provide a (minimum) 20% profit margin...Those existing clients deemed profitable will receive kid gloves treatment, frequent visits in their offices, wining/dining, annual client conferences in posh locations...Those deemed to be unprofitable (falling below the 20% benchmark) will no longer receive visits...no invitations will be extended to attend the client conferences...if the client calls with a question, it will be answered (period). No other 'client service' will be extended..."

The memo went on to emphasize that BT wanted to "reduce/eliminate the bottom 80/90% of their business and just deal with the top 10/20%." The bank instituted a policy of "repricing to exit --increasing the fees until the clients scream 'Uncle' and leave Bankers Trust (less bad press than would result from BT going to those clients and saying 'We don't want your business any longer'--they would rather force them out through increased fees and reduced services)."

With respect to trusts and estates like Edmund McCormicks, normally they do not have portability so apparently get bled dry by the bank and its attorneys.

Does this disturbing report reflect the policies and practices of Deutsche Bank's Global Asset Management today and which union and public funds since 1998 were categorized as "milk, exit and ignore?"

On August 11, 2015, I attended the hearing on the New York Attorney Discipline System and the Departmental Disciplinary Committee (DDC) which is supposed to protect the public from attorney misconduct and at the same time enforce The New York Rules of Professional Conduct. I found the hearing for the most part to be a complete charade. This did not surprise me since I had read the September 13, 2009 letter Christine Anderson sent to U.S. Attorney Eric Holder, U.S. Attorney for the Southern District of New York Preet Bharara, Chief of the Department of Justice Public Integrity Section William Welch and New York State Senate Judiciary Committee Chairman John Sampson about past and ongoing corruption in the Departmental Disciplinary Committee (DDC). In it she said:

After discovering and reporting of acts of misconduct and corruption at the DDC, which acts constituted an abuse of power and a fraud upon the public,

my employment was summarily terminated in June 2007...I discovered and reported that employees of the DDC had engaged in, inter alia, the "whitewashing" complaints of misconduct leveled against certain "select" attorneys and law firms. This "whitewashing" sometimes involved burying cases or destroying evidence, so that certain complaints were inevitably, unavoidably, dismissed. I witnessed this destruction of evidence myself...The detailed testimony presented by innumerable witnesses at the June 8th Senate hearing reveals the manifold reports of corruption and abuse by the State's Disciplinary Committees...Charges included concealment of evidence, obstruction of justice, extortionate sexual threats by attorneys, **pilfering of estates by attorneys**, abuse of power, fraud, conspiracy and repeated violations of state and federal constitutional rights...it is plain that the enduring practice of allowing attorneys in this state to police themselves is fundamentally flawed. With the numerous reports of abuse by both attorneys and state officials, the corruption in the court system has reached a critical stage.

We were not surprised to learn that Halliburton Fales 2d, a retired partner of White & Case, has been a member of the DDC from at least 2003-2013 serving as Special Counsel to the Policy Committee, which reviews proposed admonitions and recommendations to file formal charges. From 1991-1996, Mr. Fales was the Chair of the Departmental Disciplinary Committee. David Keyko was a member of the DDC from 2002-2007. You should be advised that Mrs. McCormick filed three DDC complaints, two of which are not recorded! One of the "missing" complaints included the names of several attorneys including Mr. Keyko and Mr. Rutherford.

Mrs. McCormick's case is sad and compelling. We admire her perseverance in her quest for justice and are more than willing to come to her aid.

If there is anything in this letter referring to Deutsche Bank, Bankers Trust Company, Bankers Trust Company of New York, White & Case and/or Pillsbury Winthrop Shaw Pittman and their respective attorneys that you think is inaccurate, **please inform me of what those inaccuracies are by Saturday, October 31, 2015.**

If the parties receiving this letter would like to amicably pursue a reasonably just resolution of the "McCormick Case," please contact me. Otherwise we will begin to publicly and aggressively pursue justice on behalf of Mrs. McCormick and perhaps others who will assuredly step forward to expose similar stories of corruption involving Deutsche Bank, Bankers Trust Company/Deutsche Bank Trust Company Americas and their attorneys.

The course of action will include:

- **A highly visible campaign** to expose the bank and its associates' years of continuing corrupt and criminal behavior, in violation and breaches of their fiduciary responsibilities with an emphasis on the administering of trusts and estates and using the McCormick Case as an example.

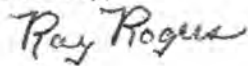
- **A website** www.StopEstateFraud.org. You can visit one of our websites focusing on issues of legal malpractice, fraud and racketeering at www.TheClientKiller.org.

- **Forming a legal team** to begin formulating legal action against Deutsche and its co-conspirators involved in the mishandling and embezzlement of trusts and estates.

- **Make Deutsche Bank a poster child** for pressing the SEC, legislators, the Labor Department and the Justice Department to stop allowing and issuing exemptions/waivers that enable criminalized banks to manage ERISA funds and trusts and estates or to escape any real sanctions. Our database allows us to directly reach out to more than 60,000 union leaders and representatives, many of whom will want to join this effort.

- **Oppose felon Deutsche Bank** from being allowed to hold significant equity in casinos having unrestricted gambling licenses, such as Stations Casinos in Nevada in which Deutsche Bank holds a 25% stake.

Sincerely,



Ray Rogers
Director



(718) 852-2808

www.CorporateCampaign.org



Pillsbury Winthrop Shaw Pittman LLP
1540 Broadway | New York, NY 10036-4039 | tel 212.858.1000 | fax 212.858.1500

David G. Keyko
tel 212.858.1604
david.keyko@pillsburylaw.com

October 30, 2015

BY EXPRESS MAIL

Mr. Ray Rogers
Director
Corporate Campaign, Inc.
P.O. Box 1002
Cooper Station
New York, NY 10276-1002

Re: Estate of Edmund J. McCormick

Dear Mr. Rogers:

As you are aware, we are counsel for Deutsche Bank Trust Company Americas (“Deutsche Bank”) in the above-referenced matter. I have been asked to respond on behalf of Deutsche Bank to your letter dated October 21, 2015 (the “Letter”) addressed to John Cryan, Juergen Fitschen, and Paul Achleitner. To the extent you wish to correspond further about this matter, please direct all correspondence to me as counsel of record.

The allegations set forth in the Letter about Mr. McCormick’s estate were made by Ms. McCormick in objections filed in 1998 and in subsequent court filings, in which Mrs. McCormick vigorously attempted to challenge an accounting filed by Deutsche Bank’s predecessor and adopted by all of the other executors of the estate, except Mrs. McCormick. Perhaps you are not aware that Mrs. McCormick’s allegations regarding her late husband’s estate have all been resolved by the courts in favor of Deutsche Bank and the other three executors. Accordingly, we will not address your allegations again individually. Suffice it to say, Deutsche Bank categorically denies the allegations.

Further, the public filings in the Surrogate’s Court make clear that Deutsche Bank and the other three executors were in fact not paid any executors’ commissions, nor are any commissions now being sought. Indeed, the estate does not have sufficient funds to reimburse the Bank fully for its

Exhibit #1

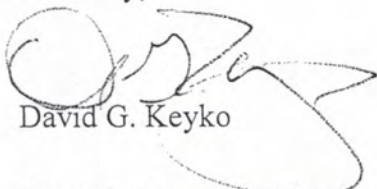
October 30, 2015

Page 2

substantial expenses in defending the executors' actions against Mrs. McCormick's allegations during the past 17 years.

Deutsche Bank hopes that you and Mrs. McCormick will respect the many court rulings that have now dismissed all of Mrs. McCormick's accusations of wrongdoing and avoid further back and forth over issues that have already been determined to be baseless.

Sincerely,

A handwritten signature in black ink, appearing to read "David G. Keyko", is written over a circular stamp or mark.

David G. Keyko

cc: Ms. Suzanne V. McCormick ✓

A 256

LAST WILL AND TESTAMENT

OF

EDMUND J. MCCORMICK

Dated: November 20, 1985

WHITE & CASE
1155 AVENUE OF THE AMERICAS
NEW YORK, N.Y. 10036

Exhibit #2

My Executors and my Trustees shall also not be liable for any decision made pursuant to the powers granted herein, and any such decision shall be solely at the risk of such business or my estate or such trust.

I wish to advise my Executors that Mr. Alfred S. Howes is an equal stockholder with me in SVM, Inc., a corporation which is a party to a "Buy-Sell" agreement with me, pursuant to which said corporation has the right to buy my shares of such stock in accordance with the terms of the "Buy-Sell" agreement. I direct my Executors to honor said agreement.

FOURTEENTH: A. I appoint ALFRED S. HOWES, HERMAN MARKOWITZ, my wife, SUZANNE V. McCORMICK, my son, EDMUND J. McCORMICK, JR., and BANKERS TRUST COMPANY, or the survivor or survivors, as Executors of this my Will.

B. I appoint ALFRED S. HOWES, HERMAN MARKOWITZ, my wife, SUZANNE V. McCORMICK, my son, EDMUND J. McCORMICK, JR., and BANKERS TRUST COMPANY, or the survivor or survivors, as Trustees under this my Will.

the signatures affixed by the Testator and by each of the undersigned affiants.

5. The Testator, at the time of the execution of the foregoing instrument, was over the age of 21 years, was of sound mind, memory and understanding, was in all respects competent to make a Will, and was not under any restraint.

6. The foregoing instrument was executed by the Testator and witnessed by each of the undersigned affiants under the supervision of WINTHROP RUTHERFORD, JR., an attorney-at-law.

7. The Testator, immediately after the execution of the foregoing instrument, requested each of the undersigned affiants to make his affidavit as to the foregoing.

[Handwritten signatures and lines]

Sworn to before me by each of the three foregoing subscribers this 12th day of October, 1985.

Marcia A. Escobar
Notary Public

MARCIA A. ESCOBAR
Notary Public, State of New York
No. 30-4758470
Qual. in Nassau Co., Cert. Filed in N.Y. Co.
Commission Expires March 30, 1986

The People of the State of New York, No. 214216

TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN:

**This is to certify that on the 25th day of JANUARY, 1989
LETTERS TESTAMENTARY OF THE Last Will and Testament OF**

EDMUND J. MC CORMICK

**late of the VILLAGE of DOBBS FERRY
were duly granted and issued by the Surrogate of the County of Westchester to
ALFRED S. HOWES, HERMAN MARKOWITZ, SUZANNE V. MC CORMICK, EDMUND J. MC CORMICK, JR., BANKERS
and that the same are still valid and in full force. TRUST COMPANY OF NEW YORK**

Dated, Attested and Sealed JANUARY 31, 1989

HON. EVANS V. BREWSTER, Surrogate of Westchester County.

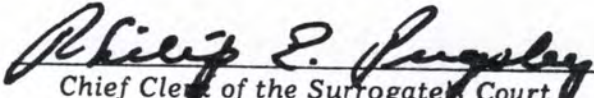

Chief Clerk of the Surrogate's Court

Exhibit #3

File No. 3522-19 68

COPY

LETTERS TESTAMENTARY

The People of the State of New York

Know All Men by These Presents that at the City of White Plains, County of Westchester, on the 25TH day of JANUARY, 19 89, before HON. EVANS V. BREWSTER, Surrogate of our said County, the Last Will and Testament of

EDMUND J. MC CORMICK

late of the VILLAGE of DOBBS FERRY in said County, deceased, was proved and

ALFRED S. HOWES, HERMAN MARKOWITZ

SHIZANNE V. MC CORMICK, EDMUND J. MC CORMICK, JR.

& BANKERS TRUST COMPANY OF NEW YORK

the executORS named therein, having duly qualified according to law, ARE hereby authorized to administer the estate of said decedent pursuant to the provisions of the will, subject to the jurisdiction and supervision of this Court.

IN TESTIMONY WHEREOF, we have caused the seal of office of the Surrogate's Court of the County of Westchester to be hereunto affixed.

Witness: Honorable Evans V. Brewster, Surrogate of our said County, at the City of White Plains, the 25TH day of JANUARY, in the year of our Lord one thousand nine hundred and EIGHTY-NINE

[Signature]
Chief Clerk

Nature.

Attention is called to the provisions of EPTL 11-16 and SCPA 719 which makes it a misdemeanor and a cause for removal for an Executor, Administrator, Trustee or Guardian to deposit or invest Estate funds in his individual account in name. All Estate funds must be deposited in the name of the Executor, Administrator, Trustee or Guardian.

Exhibit #4

Nº 13052

All which we have caused by these presents to be exemplified, and the Seal of our said Surrogate's Court to be hereunto affixed.

Witness, HONORABLE EVANS V BREWSTER, Surrogate of the County of Westchester, the 10TH day of APRIL 19 89



Chief Clerk of the Surrogate's Court

I, EVANS V. BREWSTER, Surrogate of said County, do hereby certify that PHILIP E. PUGSLEY

whose name is

subscribed to the preceding exemplification, is the Chief Clerk of the said Surrogate's Court of the County of Westchester, and that full faith and credit are due to his official acts. I further certify that the seal affixed to the exemplification is the seal of our said Surrogate's Court, and that the attestation thereof is in due form and according to the form of attestation used in this State.



WITNESS, my hand and the Seal of said Surrogate's Court this 10TH day of APRIL 19 89

Evans V. Brewster Surrogate.

State of New York }
County of Westchester }

I, PHILIP E. PUGSLEY Chief Clerk of the Surrogate's Court of the County of Westchester, do hereby certify that HONORABLE EVANS V. BREWSTER whose name is subscribed to the preceding Certificate, is the Surrogate of the County of Westchester, duly elected, sworn and qualified, and that the signature of said Surrogate to said Certificate is genuine.

IN TESTIMONY WHEREOF, I have hereto set my hand and affixed the Seal of the said Court, this 10TH day of APRIL 19 89



Chief Clerk of the Surrogate's Court

**Surrogate's Court of the State of New York
Westchester County
Certificate of Appointment of Executors**

File #: 1988-3522

IT IS HEREBY CERTIFIED that Letters in the estate of the Decedent named below have been granted by this court, as follows:

Name of Decedent:	Edmund J McCormick	Date of Death:	November 27, 1988
Domicile:	Dobbs Ferry, New York		
Fiduciary Appointed:	Suzanne V McCormick		Deutsche Bank Trust Co. Americas
Mailing Address:	231 Clinton Avenue Dobbs Ferry NY 10522		f/k/a Bankers Trust Co. of NY 345 Park Avenue New York NY 10017
	Herman Markowitz 35 Dogwood Lane Irvington NY 10533		Edmund J McCormick Jr 714 West Shore Trail Sparta NJ 07871

Type of Letters Issued: **AMENDED LETTERS TESTAMENTARY**

Letters Issued On: **January 23, 1992**

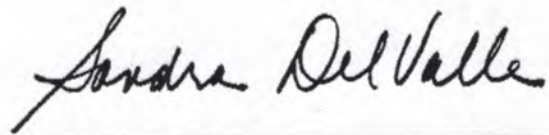
Limitations: **NONE**

and such Letters are unrevoked and in full force as of this date.

Dated: November 12, 2015

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the Westchester County Surrogate's Court at White Plains, New York.

WITNESS, Hon. James D Pagonos, Judge of the Westchester County Surrogate's Court.



Sandra DelValle, Chief Clerk
Westchester County Surrogate's Court



This Certificate is Not Valid Without the Raised Seal of the Westchester County Surrogate's Court

Exhibit #5

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 3

In the Matter of the Application of BANKERS
TRUST COMPANY OF NEW YORK
(fka DEUTSCHE BANK TRUST COMPANY)
and BANKERS TRUST COMPANY,

Index No. 121823/1999

DECISION and ORDER

Petitioners,

-against-

For substitution of fiduciary relationships
pursuant to NY Banking Law §154.

FILED
AUG 18 2003
COUNTY CLERK'S OFFICE
NEW YORK

KARLA MOSKOWITZ, J.:

Bankers Trust Company ("BTCo"; now known as Deutsche Bank Trust Company Americas) and Bankers Trust Company of New York ("Trust Co"; now known as Deutsche Bank Trust Company New York) (collectively, the "Bank"), pursuant to Section 154 of the Banking Law (the "§154 proceeding"), commenced this proceeding in 1999 seeking to substitute Trust Co for BTCo as fiduciary with respect to certain designated trusts and estates then under administration by BTCo and also with respect to all future fiduciary relationships. As discussed *infra*, the court granted that application in 1999.

Suzanne McCormick, the executor and principal beneficiary under the will of her late husband, Edmund J. McCormick (the "Estate"), in which BTCo is also named as an executor, moves for an order, pursuant to CPLR 5015(a):(a) vacating the prior orders of this court substituting Trust Co for BTCo, to the extent that these orders affect the Estate; (b) unsealing certain records in this proceeding that this court ordered impounded and sealed; and (c) clarifying whether the prior orders substituting Trust Co for BTCo affect the Estate.

Exhibit #6

In response, the Bank cross-moves for an order, pursuant to 22 NYCRR §130-1, imposing sanctions upon McCormick and her attorneys.

McCormick has withdrawn her application in all respects. However, the Bank has refused to withdraw its request for sanctions. Upon due consideration, the court denies the Bank's cross motion.

BACKGROUND

The §154 Proceeding

In commencing this §154 proceeding, the Bank candidly acknowledged that its request was triggered by BTCo's guilty plea in the United States District Court, Southern District of New York, in March 1999, to a three-count criminal felony information charging it with making false entries on the books and records of a federally regulated bank. The Bank sought the substitution because it would likely otherwise face challenges, pursuant to Surrogate's Court Procedure Act §707, to BTCo's qualifications to act as fiduciary, including claims that it is ineligible for appointment and/or continued service as a trustee or executor.¹

In its petition, the Bank sought substitution for two identified classes of fiduciary relationships: (a) BTCo's fiduciary relationships existing on the date of the petition as listed in the petition; and (b) every fiduciary relationship taking effect after the date of the hearing of the petition. All persons identified in the Bank's petition in the §154 proceeding received notice and the court appointed a Guardian ad litem.

¹ SCPA § 707, entitled "eligibility to receive letters," provides in pertinent part that "[l]etters may issue to a natural person or to a person authorized by law to be a fiduciary except as follows: 1. Persons ineligible (d) a felon, (e) one who does not possess the qualifications required of a fiduciary by reason of . . . dishonesty, improvidence . . . or who is otherwise unfit for the execution of the office."

A number of orders ensued. The primary order, dated December 17, 1999 (Hon. Barry A. Cozier; the "December 17 1999 Order"), granted the Bank's application to substitute Trust Co for BTCo for every fiduciary relationship listed in the petition as well as every fiduciary relationship taking effect after the date of the order, except: (a) those relationship for which objections to substitution had been filed; and (b) the relationships specifically identified in the petition as excepted from the requested substitution. In this regard, the December 17 1999 Order states:

Pursuant to NYBL 154, Trust Co. is hereby substituted for BTCo in every existing fiduciary capacity designated in the verified petition and in every fiduciary capacity relating to estates, guardianships, executorships, conservatorships, committeeships, testamentary trusts, inter vivos trusts, IRA rollover trusts, supplemental needs trust and or fiduciary agencies which may take effect hereafter.

The December 17 1999 Order further directed the impounding of the list of designees, without disclosure to, inspection by or copying of to any persons other than: (a) individuals associated with or employed by the court; or (b) individuals with a court order granting permission to inspect the exhibit.

The McCormick Will and Estate

Edmund J. McCormick died in November 1988. His will appointed various executors, including BTCo and his widow, the movant here. It is not disputed that Edmund J. McCormick's will provides for a trust that has not been funded. The parties disagree over the rather esoteric issue of whether that trust currently exists, will never exist or whether it is a fiduciary relationship that will come into existence at some time in the future.

McCormick's relationship with the Bank, since her husband's death more than 14 years

ago, has been hostile and acrimonious. She accuses the Bank of grossly mismanaging the Estate and wasting or dissipating millions of dollars. There are at least two proceedings pertaining to the Estate now pending in the Surrogates Court, Westchester County (File No. 3522/88, Surrogate James D. Pagonis). There is an accounting proceeding that BTCo and other executors of the Estate commenced in 1996 that McCormick has contested. In her Objections, dated September 10, 1998, McCormick asserted that BTCo committed numerous breaches of its fiduciary duties. The Surrogate disposed of some of those objections on motion; he held that others present factual issues not capable of resolution by motion. Also pending before the Surrogate is a motion McCormick made in 2002 seeking to remove BTCo as an executor of the Estate. Finally, McCormick commenced an Article 78 proceeding in this court, entitled McCormick v Bankers Trust Company (Supreme Court, New York County, Index No. 104600/03, Hon. Harold Beeler) against the Bank, the New York State Banking Department, and the New York State Board of Parole, seeking a judgment annulling: (1) a Certificate of Relief from Disabilities issued to BTCo by the Parole Board on December 2, 1999 pursuant to Article 23 of the Correction Law; (2) the Department of Banking's approval of certain name changes made by the Bank (i.e., BTCo's change of name to Deutsche Bank Trust Company Americas and Trust Co's change of name to Deutsche Bank Trust Company New York) effective April 15, 2002; and (3) the Bank's authorization to do business in the State of New York.²

This Application

Proceeding under the assumption that the Estate was affected by the court's orders of

² In May 2003, the Article 78 petitioner discontinued the proceeding without prejudice, pursuant to stipulation.

substitution in the §154 proceeding, McCormick asked the court to vacate its orders as they pertain to the Estate and to permit her to file objections because she was never served with notice of this §154 proceeding.³

In the papers submitted in connection with this application, McCormick detailed the Bank's alleged wrongdoings in its handling of matters pertaining to the Estate. Additionally, McCormick repeatedly referred to the Bank as a felon (noting, among other things, its criminal conviction and its alleged involvement in the Enron investigation) and comments on Deutsche Bank's reputed involvement in various World War II atrocities, including events concerning "Nazi Gold."

McCormick claimed that the trust provided for in her late husband's will is a trust that will take effect in the future and, therefore, appears to be affected by the language of the December 17 1999 Order. The Bank, on the other hand, claimed that the trust will never come into existence because the Estate is insolvent. The Bank also maintained that the Estate cannot, in any event, be affected by the orders in the §154 proceeding because the Estate was not identified on any of the lists.

After receiving McCormick's application, counsel for the Bank represented in writing to McCormick's counsel that: (a) McCormick was never served with notice of the §154 proceeding; (b) no substitution of fiduciary occurred with respect to the Estate; and (c) the rights of the Estate remain entirely unaffected by the outcome of the §154 proceeding. Based on these representations, the Bank demanded that McCormick withdraw her application. Although

³ Although denominated a motion to vacate a default, in many respects, this application is more similar to a motion for leave to intervene.

counsel nearly resolved this application, ultimately they were unable to reach an agreement.

Two days before oral argument, the Bank delivered a document to McCormick's counsel, entitled "Renunciation of Appointment of Nominated Co-Trustee" (the "Renunciation"). Both Deutsche Bank Trust Company Americas (formerly BTCo) and Deutsche Bank Trust company New York (formerly Trust Co) executed the Renunciation on April 18, 2003. As a result of the Renunciation, there is no longer any possibility that either the original corporate fiduciary - BTCo - or its substitute fiduciary - Trust Co - will ever serve as trustee of any trust arising under the Estate. Thus, as a result of the Renunciation, the Estate is unaffected by the §154 proceeding.

At oral argument, the court requisitioned the sealed files in the §154 proceeding in order to determine if the Estate was formally named in any of the lists. The court reviewed the files and found the Estate was not listed and the court, on the record, so advised the parties. At that time, McCormick's counsel advised the court that his client was withdrawing her application in all respects. The Bank, however, refused to withdraw its demand for sanctions, claiming that McCormick's bringing of the application and her insistence on thereafter continuing to press it, was frivolous.

DISCUSSION

22 NYCRR Part 130-1.1 defines conduct as frivolous if:

- (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
- (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
- (3) it asserts material factual statements that are false.

. . . . In determining whether the conduct undertaken was frivolous, the court

shall consider, among other issues the circumstances under which the conduct took place, including the time available for investigating the legal or factual basis of the conduct, and whether or not the conduct was continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel or the party.

The Bank argues that McCormick (and her counsel) have violated each of these obligations, because the proof establishes that: (a) they chose to proceed with the application even though the Bank and the Guardian ad litem in the §154 proceeding informed McCormick and her counsel that the Estate was not affected by the orders issued in the proceeding; (b) chose to prosecute the application without any legitimate reason for disclosure of the sealed records; and (c), in their submissions in support of the application, McCormick and her attorneys made numerous inflammatory and false statements about the Bank irrelevant to the relief sought.

Additionally, the Bank claims that petitioner's application is part of a larger campaign to discredit and harass the Bank in several courts and other arenas. The bank asserts that many allegations in this application are the same as those she asserted in her removal application and in her objections to BTCo's accounting, including repeated allegations of the Bank's financial dishonesty, criminal behavior and other wrongdoing. The Bank contends that her accusations are not relevant to this case and are alleged for the sole purpose of inflaming the court and harassing the Bank.

McCormick counters that her allegations are not frivolous in any respect. She submits that the Bank can hardly complain about her allegations of the Bank's criminal conviction, since those allegations are true and were the basis for which the Bank commenced this §154 proceeding in the first place. Her allegations concerning Deutsche Bank's World War II activities, McCormick submits, are similarly well publicized. McCormick submits that these

allegations are not extraneous or irrelevant, but, rather, go to the very heart of the issue of the Bank's fitness to serve as a fiduciary.

McCormick submits that, given the broad language of the prior court orders in this proceeding, together with her inability to review the file contents to determine if the Estate was mentioned in any of the filings or the service lists, she was compelled to apply to the court for permission to review the impounded portions of the file to determine whether the Estate was affected. In the eleventh hour, the Bank delivered the Renunciation to McCormick's counsel, mooted any need for McCormick to review the sealed files, because the Bank will never act as fiduciary under the trust in question.

The Bank's application for sanctions pursuant to 22 NYCRR § 130-1.1 is denied. The Bank has failed to convince the court that McCormick's application lacked merit as a matter of law. In this regard, while the Renunciation now negates any possibility that the Bank, or any of its affiliates, will act as a fiduciary of the trust, it is not abundantly clear, as the Bank suggests, that the Estate, in the absence of the Renunciation, would not have been affected by the orders in the §154 proceeding. Even if McCormick's application would have been denied, that does not mean it was necessarily frivolous (see, e.g., Northern Adirondack Cent. School Dist. v L.H. La Plante Co., 229 AD2d 764, 766; Cruz v Amsterdam Housing Authority, 174 Misc2d 189 [Sup Ct Albany County 1997]). The court is similarly unable to find that McCormick's motive, in bringing this application, was to harass or injure the Bank. Also, while certain statements in McCormick's papers may be inaccurate and hyperbole, these, without more, do not support the conclusion that the application was frivolous. The court concludes that the Bank did not sufficiently prove that McCormick engaged in the sort of conduct that calls for the imposition of

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100

sanctions (see e.g., Bell v New York, 96 NY2d 811; Broadwhite Assoc. v Truong, 294 AD2d 140).

CONCLUSION

It is ORDERED that the petition by Suzanne McCormick is withdrawn; and it is further ORDERED that the cross motion by Bankers Trust Company (now known as Deutsche Bank Trust Company Americas) and Bankers Trust Company of New York (now known as Deutsche Bank Trust Company New York) for an award of sanctions is denied.

Dated: August 12, 2003

ENTER:



J.S.C.

FILED

AUG 18 2003

COUNTY CLERK'S OFFICE
NEW YORK