

## T&E Litigation Newsletter- 11/14/16

November 14, 2016

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There has not been much case law of particular relevance in the T&E area since our last newsletter, but three recent federal court decisions—one from the First Circuit Court of Appeals, and two from the United States District Court for the District of Massachusetts—are worth mentioning, largely as a reminder about the scope of federal jurisdiction over T&E-related disputes.

In *McNeil v. Bristol Count Probate and Family Court Division*, Civil Action No. 16-11712-FDS, 2016 U.S. Dist. LEXIS 137001 (D. Mass. Oct. 3, 2016), the plaintiff is a woman who was upset because she had not been appointed as the personal representative of her father's estate, and therefore filed suit against the probate court judge, probate court personnel, and the court-appointed personal representative. Not surprisingly, the federal district court explained that the probate court judge and personnel are immune or quasi-immune from suit. As for the court-appointed personal representative, the federal district court explained that the "probate exception" to diversity jurisdiction applies, and so that the plaintiff's claims against the court-appointed personal representative should not stand because the probate proceedings are still pending in probate court. Under the probate exception, "federal courts are deemed to lack jurisdiction to 'interfere with the probate proceedings or assume general jurisdiction of the probate or control of the property in the custody of the state court.'"

Conversely, in *Torosian v. Garabedian*, Civil Action No. 15-11887-FDS, 2106 U.S. Dist. LEXIS 136996 (D. Mass. Oct. 3, 2016) and *Cooper v. D'Amore*, Docket Nos. 16-1067, 16-1211, 2016 U.S. App. LEXIS 18080 (1st Cir. Oct. 5, 2016), the "probate exception" was not at issue and the claims were permitted to proceed in federal court. The *Torosian* case involves claims of intentional infliction of emotional distress and intentional interference with inheritance or gift, and the *Cooper* case involves claims relating to the distribution of an IRA. The most interesting nugget from these decisions about the claims themselves can be found in the *Torosian* case, where the federal district court noted that New Hampshire law applies substantively, and that the tort of intentional interference with inheritance or gift is not recognized in New Hampshire.

*This advisory should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own lawyer concerning your situation and any specific legal questions you may have.*

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