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MEMORANDUM

TO: **Participants in the American Bar Association 2007 Joint Fall CLE Meeting**

FROM: **Giordani, Schurig, Beckett & Tackett, L.L.P.**

DATE: **September 2006**

RE: **Summaries of Important Asset Protection Cases**

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1. *In re Portnoy*, 201 B.R. 685 (S.D.N.Y. 1996)

In March of 1987, Larry Portnoy, former president and sole shareholder of Mary Drawers, Inc. unconditionally guaranteed any existing and future indebtedness of that entity to Marine Midland Bank. About a year later, the Bank loaned the company over $1 million. In August of 1989, two months after Portnoy knew that Mary Drawers was in trouble, he transferred his assets into a Jersey trust. In December of that year, the company defaulted on its obligations to Marine Midland Bank, and on February 22, 1990, Marine sued Portnoy on his guarantee. During the course of settlement negotiations with Marine Bank, Portnoy misled the bank into believing that all of his assets had been used for cancer treatments, not withstanding his actual transfer of those assets to the Jersey trust. He also understated his annual income by nearly $130,000. After the Court ruled against Portnoy, he filed a Chapter 7 petition and then moved for summary judgment.

The Court found that Portnoy's false claims during the previous negotiations were admissible in the bankruptcy case as evidence of his intentional concealment of assets, and therefore, that Portnoy was not entitled to a discharge of his debts. The court further found that the law of New York, not the law of Jersey as stated in the trust document, would apply in determining whether Portnoy's interest in the trust should be considered part of his estate. The court reasoned that, since "the trust, the beneficiaries, and the ramifications of Portnoy's assets being transferred into the trust had their most significant impact in the United States," New York had the weightier concern in the matter and its law should be applied. Under New York law, the creditors of the settlor of a self-settled spendthrift trust can reach the maximum amount the trustee, under the terms of the trust, is authorized to pay out, even if, in his own discretion, the trustee desires to pay out nothing. Therefore, the court found, Portnoy's assets and the assets of the trust are one and the same, so the Bankruptcy Code cannot offer Portnoy any relief.

2. *Riechers v. Riechers*, 679 N.Y.S.2d 233 (1998)

This case involves a 1997 divorce between a couple married for 31 years. In 1992, the defendant Dr. Roger Riechers formed the Riechers Family Partnership Limited in Colorado, with himself as general partner. At the same time he also settled an irrevocable trust in the Cook Islands (the Riechers Family Trust) with a 99% limited partnership interest in the Reichers Family Partnership Limited. Mrs. Mary Riechers (plaintiff) is not personally named as a beneficiary of the trust. Rather, the trust names the "Spouse of the Settlor" as a beneficiary. Hence, Mary would no longer be a beneficiary of the trust upon an entry of a judgment of divorce. In previous proceedings, the court had determined that the trust and partnership were funded with marital assets. Dr. Riechers established the trust and limited partnership in an effort to preserve his family's assets after having been sued three times for malpractice in the past five years. It was assumed by the court that the structure was not established by Dr. Riechers in an attempt to avoid equitable distribution of marital assets upon divorce.

Although the court found that the property in the Riechers Family Trust was subject to equitable distribution due to its nature as marital property, the court recognized the fact that protecting family assets from future creditors is a legitimate purpose for establishing a trust, and therefore, no action would lie to set aside the trust.

3. <u>*FTC v. Affordable Media, LLC,* 179 F.3d 1228 (9th Cir. 1999)</u>

The Andersons, a Nevada couple, created an irrevocable trust in the Cook Islands, into which they settled the proceeds of a fraudulent telemarketing scheme. Under the trust document, they are named as protectors and co-trustees together with AsiaCiti Trust Limited. The trust instrument states that the defendants would be removed as trustees and that AsiaCiti would not be allowed to repatriate any of the trust assets to the U.S. if a so-called "event of duress" occurs. The district court ordered the Andersons to repatriate the trust assets. When the Andersons directed AsiaCiti to repatriate the assets to the U.S. to be held under control of the district court, AsiaCiti removed the defendants as trustees and refused to repatriate any of the assets because this was an "event of duress." The defendants attempted to appoint their children as trustees, knowing that AsiaCiti would remove them, and the defendants also resigned as protectors of the trust.

When the Andersons claimed that it was impossible for them to repatriate the trust assets, the court found them in contempt. The court believed that the Andersons' inability to repatriate the assets was self-imposed, and that this impossibility was the purpose for which the trust was created.

4. <u>*SEC v. Bilzerian*, 112 F.Supp.2d 12 (D.C. Cir. 2000)</u>

Paul A. Bilzerian, the debtor in this case, transferred substantial assets into a complex structure of offshore trusts and family-owned companies and partnerships after a disgorgement order of over $62 million had already been entered. Bilzerian attempted to argue that he should not be held in contempt for failure to comply with the order on the basis that it was impossible. However, the court held him in contempt, stating that, "if he cannot convince the trustees or Trust protector to return his assets to him, it is a problem of his own making."

5. <u>*SEC v. Brennan*, 230 F.3d 65 (2nd Cir. 2000)</u>

Defendant Robert Brennan was a principal in a discount brokerage firm that was found to have "perpetrated a 'massive and continuing fraud' on their customers in violation of the federal securities law" and both Brennan and the firm were ordered to disgorge $75mm in illegal profits plus prejudgment interest. Sometime during the trial but before the order was entered, and before defendant filed for bankruptcy in 1995, Brennan established an offshore asset protection trust in Gibraltar, and funded it with $5mm in municipal securities. The terms of the trust name Brennan's three sons as beneficiaries, although there is no obligation on the part of the trustee to make distributions to the beneficiaries. Moreover, the principal and accumulated interest revert back to Brennan after ten years. Brennan did not include his interest in the trust in his original bankruptcy petition, and after law enforcement authorities discovered it, he valued his interest at $0. After discovery of the trust, the defendant moved the trust from Gibraltar to Mauritius, and then to Nevis. The bankruptcy trustee attempted to recover the trust assets by filing an action in Nevis but the action was dismissed for failure to state a claim under Nevis law.

The bankruptcy court denied an application for an order requiring repatriation of the trust assets but entered an order enjoining Brennan from taking any action that might cause the transfer of the trust assets. Brennan consented to this order. The SEC then asked the district court for an *ex parte* order to show cause why Brennan should not be held in civil contempt for not complying with the disgorgement order and for ancillary relief such as repatriation of the trust assets.

The district court granted the relief but the Second Circuit held, on appeal, that the district court's order violated the automatic stay provisions of the Bankruptcy Code. Therefore, plaintiffs cannot choose a forum that may be more beneficial to them once the debtor is in bankruptcy.

Brennan eventually committed bankruptcy fraud and was sentenced to jail to serve out his time for the criminal contempt (*U.S. v. Brennan*, 395 F.3d 59 (2nd Cir. 2005) and *U.S. v. Brennan*, 406 F. 3d 113 (2nd Cir. 2005)).

6. *In re Lawrence*, 279 F.3d 1294 (11th Cir. 2002); 238 B.R. 498 (Bkrtcy.S.D.Fla. 1999); 227 B.R. 907 (1998)

Prior to a $20.4 million arbitration award against him in 1991, Stephan Jay Lawrence settled the Lawrence Family Trust in Jersey, Channel Islands, with 90% of his assets. Lawrence retained a lifetime beneficial interest in the trust and the power to remove and replace trustees. One month prior to the arbitration award, the trust document was amended to include a spendthrift clause and to change the governing law of the trust to the Republic of Mauritius. In January 1993, the trust document was again amended so that the settlor's powers could not be executed under duress or coercion, and his life interest would terminate in the event of his bankruptcy. In March 1995, the trustee declared that Lawrence was an "excluded person" from the trust (*i.e.,* he could not receive benefits from the trust). This declaration was subsequently made irrevocable by the trustee.

Due to the timing of the trust's creation and the subsequent amendments to the trust document in which Lawrence's control over the trust was terminated, the court found that the purpose of the trust was to shield Lawrence's assets from the $20 million arbitration judgment against him. The Bankruptcy court acknowledged that debtors may engage in pre-bankruptcy "exemption planning," and will not be penalized for making full use of available exemptions. However, given Lawrence's apparent fraudulent intentions and his evasiveness during the Bankruptcy proceedings, the court would not apply the law of the Republic of Mauritius in evaluating his rights and obligations under the trust and whether he had sufficient interest to bring the trust corpus into the bankruptcy estate. As a matter of public policy, the court would not allow a debtor to unilaterally remove property from the bankruptcy estate based simply on his choice of situs for the trust, but instead would apply the law of Florida and federal bankruptcy law as having an overriding interest in the trust. Under §727(a) of the Bankruptcy Code, a debtor is not allowed a discharge if he has hidden or transferred property within the year prior to the bankruptcy, or if he fails to satisfactorily explain a loss of assets. The court found that, under this provision of the Bankruptcy Code, Lawrence was not entitled to a discharge.

Immediately after the Bankruptcy court refused to discharge Lawrence's debts, the Bankruptcy trustee sought to compel a turnover of the trust's assets, which the court granted. Lawrence claimed that it was impossible for him to comply with the court's order due to his lack of power over the trustee or the trust assets.

However, the court found that this impossibility was "self created" because the trust instrument, when read as a whole, gave the settlor *de facto* control over the trust through his ability to appoint trustees who could in their absolute discretion reinstate Lawrence as a beneficiary and assign the entire trust property to him, and the "duress" clause was designed to help Lawrence evade contempt charges. Accordingly, Lawrence was incarcerated for failure to comply with the court's order and fined $10,000 per day until he purged his contempt.

On December 12, 2006, U.S. District Judge Alan Gold entered the order to release Lawrence from the federal detention center where he has been held for civil contempt for more than six years. Judge Gold ruled that Lawrence's continued incarceration no longer served its purpose to coerce Lawrence into repatriating the trust's assets. The Judge also claimed that the length of Lawrence's incarceration was not the issue; he said that there was no possibility Lawrence would comply with the contempt order, because he valued his money more than his liberty.

7. *Chadwick v. Janecka*, 312 F.3d 597 (3rd Cir. 2002)

In November 1992, H. Beatty and Barbara Jean Chadwick divorced, and during an equitable distribution conference, Mr. Chadwick claimed that he had unilaterally transferred $2.5 million of marital property to a Gibraltar partnership to satisfy a debt. It was later discovered that: (1) one of the principals of the partnership had returned $869,106 to Mr. Chadwick, and that these funds had been used to purchase three insurance annuity contracts; (2) $995,726 had been transferred to a Swiss bank account in Mr. Chadwick's name; and (3) $550,000 in stock certificates he claimed had been transferred were never received by the purported transferee. The court froze the marital assets in April 1994, and in May 1994 Mr. Chadwick redeemed the annuity contracts and deposited the proceeds in a Panamanian account. At that time, the court ordered him to return the $2.5 million to an account under the jurisdiction of the court. Mr. Chadwick refused to comply. The court held 3 contempt hearings at which he never appeared and in July 1994, the court held him in contempt and issued a warrant for his arrest. Mr. Chadwick fled the jurisdiction but was finally arrested and jailed. Bail was set at $3 million.

The case addresses the issue of whether a defendant can be incarcerated indefinitely for civil contempt and determines that if the defendant can comply but refuses to do so the court can hold the defendant in jail subject to a contempt order until the contempt is purged. In Chadwick's case, he had been in jail for almost 8 years.

The opinion gives an excellent analysis of existent case law regarding civil contempt and the impossibility defense to civil contempt that is outlined in the *Maggio* case (*Maggio v. Zeitz,* 333 U.S. 56, S.Ct. 40d1, 92 L.Ed.476 (1948)) and concludes that, unless Chadwick is able to show that he is unable to comply with the court's order, there is no federal constitutional bar to his indefinite confinement for civil contempt. It reaffirms, however, the impossibility defense to civil contempt.

8. *Eulich v. U.S.,* 2004 WL 905816 (N.D. Tex. 2004), 93 A.F.T.R. 2d 2004-2466 (unreported)

John and Virginia Eulich established a trust in the Bahamas through the use of a nominee settlor. The Eulichs retained an annuity from the trust and their daughters were named as beneficiaries. The IRS audited the Eulichs and succeeded in obtaining an order against the Eulichs to provide information about the trust. The Eulichs provided most of the documents required by the IRS summonses and formal document requests; however, they did not produce any documents that were maintained by the trustee. In August of 2003, the Fifth Circuit Court affirmed the District Court's enforcement order against John Eulich. Conversely, it also determined that Virginia Eulich was no longer a party to the action and had no obligation or responsibility with respect to the solicited documents, because she in no way had custody or control of them. The question became whether John Eulich's failure to produce documents maintained by the trustee constituted a violation of the court's order, making him subject to being held in civil contempt of court, or whether he had fulfilled the court order by exhausting all reasonable avenues to comply with the order.

In attempting to comply with the District Court's enforcement order, Mr. Eulich had (1) requested the information from the trustee and the trust's Advisory Committee, (2) consulted with an attorney in London about obtaining the information from the Bahamas, and (3) provided testimony that Bahamian secrecy laws would prohibit disclosure of the information. The Government claimed that Mr. Eulich's attempts to comply did not exhaust all means, because he did not (1) make steps to change the trustee, (2) appoint new members to the advisory committee, or (3) pursue additional avenues. In determining whether Mr. Eulich had exhausted all reasonable avenues to comply with the court's enforcement order, the court analyzed the Government's claims and concluded the following.

1. <u>Change of Trustee</u>: The Government argued that Mr. Eulich could have taken steps to see that a more compliant trustee was appointed. The court held that the cost of changing trustees exceeded the reasonable efforts required by a person subject to an enforcement order.
2. <u>Changes in the Advisory Committee</u>: The court held that Mr. Eulich could have appointed additional members to the Advisory Committee, ones that would have been willing to seek the required records in the possession of the trustee. Despite the fact that Mr. Eulich would have had to obtain the consent of two surviving persons authorized to appoint Advisory Committee members, it was Mr. Eulich's failure to even try that was fatal to his argument.
3. <u>Additional Avenues</u>: Mr. Eulich failed to make any attempt to obtain local counsel in the Bahamas. The court held that he should have made an effort to obtain the required documents through the Bahamian courts. Furthermore, the court held that notwithstanding the limitations on disclosure imposed by the Bahamian statutes, none prohibits disclosures expressly or impliedly consented to by "the customer" and the fact that Mr. Eulich gave the trustee investment advice and the fact that information had been provided to Mr. Eulich's personal attorney in the past led the court to conclude that Mr. Eulich was "the customer" and could have given consent.

Ultimately, the court ruled that Mr. Eulich failed to comply with the District Court's enforcement order, and that it was not unreasonable to require further efforts on his part, including, if need be, filing an action in the Bahamian courts to require the trustee to disclose the records of the trust. The court recommended that Mr. Eulich be held in civil contempt of court, and imposed a $1,500 per day fine until Mr. Eulich produced the required documents, which would be tolled if Mr. Eulich initiated a court proceeding in the Bahamas to obtain the required documents.

9. <u>***Eulich v. U.S.***, **2004 WL 1844821 (N.D. Tex. 2004), 94 A.F.T.R. 2d 2004-5550 (unreported)**</u>

Subsequent to the earlier case, John Eulich appealed on five grounds, all of which were overruled. The pertinent ones are as follows: (i) the magistrate judge erred in finding Mr. Eulich in civil contempt of the court's enforcement order; (ii) the magistrate judge erred in concluding that Mr.

Eulich did not make all reasonable efforts to comply with the court's enforcement order because he failed to add members to the Advisory Committee; (iii) the magistrate judge erred in concluding that Mr. Eulich did not make all reasonable efforts to comply with the court's enforcement order because he failed to file a lawsuit in the Bahamas.

This opinion also contains a new discussion of Mr. Eulich's creation of the situation that has made it impossible for him to produce the documents and states that "Eulich cannot benefit from a situation that he himself created." Although not a reported case, it is disturbing nonetheless because it introduces a concept that has not been applied before to a trust case of this type: that if a settlor establishes a trust in a protective jurisdiction and the laws of that jurisdiction will not allow certain actions, the settlor will be held in contempt despite the fact that he cannot control the outcome. This is dangerously close to applying civil contempt as a sanction rather than as a remedy for the benefit of the complainant. Once contempt is applied to situations that a defendant cannot in fact control, the contempt order moves from the civil, remedial realm to the criminal, punitive realm in which contempt is applied retrospectively for past disobedience.

In addition, the court sustained the Government's objections that the sanctions be tolled pending a lawsuit by Mr. Eulich in the Bahamas to compel disclosure. Furthermore, the court increased the fine to $5,000 per day for the first 30 days, then $10,000 per day thereafter. After the 44th day, if the court receives a notice of Mr. Eulich's noncompliance from the Government's attorney, a hearing will be set to determine whether the daily fine should be increased or if Mr. Eulich should be incarcerated. The court found it was necessary to expand the contempt ruling due to the size of the trust.

10. *__Federal Trade Commission v. Ameridebt, 373 F.Supp.2d 558 (2005)__*

In this case, the defendants, Ameridebt Inc., DebtWorks, Inc., and Andris Pukke were sued by the Federal Trade Commission ("FTC") for violating section 5(a) of the FTC Act which prohibits "unfair or deceptive acts or practices in or affecting commerce." Ameridebt, Inc., as a non-profit debt counseling service, was systematically deducting the entire first payment of their customers' repayment plans without first notifying the customers of the deduction. The funds were transferred to Debtworks Inc., and as its sole shareholder, Andris Pukke received those funds.

When the FTC eventually brought suit in 2004, it was revealed that in 2002, when Pukke first became aware of the FTC investigation into Ameridebt Inc., and Debtworks Inc., he had established various trusts in Delaware, Nevis, and the Cook Islands to which he had transferred approximately $20 million. He had also transferred a total of $2.8 million to his father, his girlfriend, and also to his ex-wife as part of a divorce consent agreement.

When this was discovered during the case, Ameridebt filed for Chapter 11 bankruptcy and sought a stay from the current action. The Court denied the request stating that a bankruptcy petition could not operate as a stay of an action by a governmental unit such as the FTC that was attempting to enforce a government regulation. Consequently, the FTC requested a preliminary injunction to have: (1) a receiver appointed; (2) all assets frozen; and (3) an order to repatriate all assets, so as to preserve them pending the outcome of the case. The Court granted the injunction, and also dismissed Mrs. Pukke's allegation that the FTC had failed to state a claim against her. While the Court acknowledged that she had not been named a defendant in the case, the Court held that the funds she received from Mr. Pukke were nonetheless subject to the injunction, because they were ill-gotten and she had no legitimate claim to them. The Court ordered that a total of $172 million be repatriated.

11. *U.S. v. Grant*, Slip Copy (U.S.D.C. S.D. Fla. 2005)

Between 1983 and 1984, Raymond and Arline Grant established two offshore trusts, one in Bermuda and one in Jersey. Mr. Grant was the grantor of both trusts, with himself as the beneficiary of one trust and Mrs. Grant as the beneficiary of the other.

In 1991 and 1993, the IRS determined that the Grants owed millions of dollars in unpaid taxes due to Raymond's alleged participation in various tax shelters during the years 1977 through 1982 and 1984 through 1987. The Grants agreed to an installment plan of $3,000 per month to pay off their tax liability. The IRS terminated the agreement soon thereafter and then referred the case to the Department of Justice ("DOJ"). The DOJ sued the Grants and obtained a final judgment in March of 2003 for over $36 million.

In arguing that the trusts constitute property of the Grants that should be repatriated in order to pay off the judgment, the DOJ cited 26 U.S.C. § 6321, which states that whenever a person fails to pay taxes due to the federal government, a lien arises in favor of the United States upon all property and "rights to property," whether real or personal, belonging to such person. The Grants claimed that repatriation would violate the laws of the countries in which the trusts were held, and that they had no desire to repatriate the trusts. After Mr. Grant died in January of 2005, Mrs. Grant became the beneficiary of both the Jersey and Bermuda trusts. She argued that she had not participated in the tax shelters which resulted in the tax liability, so she and her assets should not be liable. However, since the tax liability was attached to both her assets and Mr. Grant's assets, she was liable.

The question became whether or not she actually had the power to repatriate the trusts' assets. Both the Jersey and Bermuda trust documents allowed the Trustee to make distributions based entirely on Mrs. Grant's statement of her needs in her "sole and unreviewable discretion." Mrs. Grant argued that ordering her to ask the Trustee for a distribution would infringe on her "sole and unreviewable discretion." Both of the trusts also allowed Mrs. Grant to appoint a new Trustee in any jurisdiction throughout the world at any time. The Jersey trust stated that the law of England would govern the trust unless the Grantor specified differently, while the Bermuda trust stated that the laws of the country of the trustee would govern the trust. Yet, once again, Mrs. Grant argued that a court order forcing her to change the trustee would violate the terms of the trust, since it was supposed to be up to her sole discretion.

Nevertheless, the Court ordered Mrs. Grant to exercise her power to appoint a trustee in the United States for both the Bermuda and Jersey trusts, or to otherwise repatriate the assets.

12. *Morris v. Morris*, 932 So.2d 1007 (Fla. 2006)

In 1998, eleven years after they were married, Lee and Merry Morris signed a post-nuptial agreement. The agreement stated that, in the event of a divorce, they would have joint custody of their children and Mrs. Morris would be entitled to a $1.35 million payment from Mr. Morris. If Mrs. Morris challenged the agreement, she would have to forfeit the payment. In 2001, the agreement was modified to increase the payment to Mrs. Morris to $1.5 million. Later that same year, the couple divorced, and Mrs. Morris received the payment of $1.5 million under the agreement.

In June of 2003, Mrs. Morris brought an action to enforce and clarify the child custody and visitation provisions of the agreement. The Court denied Mrs. Morris' claims and determined that her action was equivalent to contesting the post-nuptial agreement. She was required to forfeit the $1.5 million payment from Mr. Morris along with $264,000 to cover Mr. Morris' attorney fees, a judgment that came to just over $1.8 million.

Mr. Morris attempted to collect the settlement only to find that Mrs. Morris had transferred most of her liquid assets to a Cook Islands trust. The Florida Court prohibited Mrs. Morris from transferring any more of her assets to the Cook Islands and ordered her to repatriate the assets that she had already transferred. Mrs. Morris fled from Florida instead of adhering to the Court's orders, and subsequently failed to appear in the Florida Court three times. The Court held her in criminal contempt of Court and issued three arrest warrants, which Mr. Morris' attorney registered with the national Sheriff's registry so that Mrs. Morris can be arrested anywhere in the country and returned to Florida. The Florida Court of Appeals dismissed Mrs. Morris' appeals.

13. ***U.S. v. Townley*, 181 Fed.Appx. 630 (C.A. 9 (Wash.) 2006)**

Bryce and Charlene Townley created and transferred property to a domestic trust with their children as the beneficiaries and themselves as the "Trust Managers." As Trust Managers, the Townleys had the power to handle all trust affairs indefinitely. At the time of the trust's creation, the couple had no creditors; however, they stated that their purpose in creating the trust was to protect their assets from future unknown creditors. Soon thereafter, the IRS determined that the couple owed a large amount in unpaid federal income taxes and penalties.

The Washington Court found that the Townleys' transfer of property to the trust was fraudulent because it was done with the intent to defeat the claims of future unknown creditors, which satisfied the "actual intent" element of the Washington statute. Section 19.40.041 states:

> (a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:
> (1) With actual intent to hinder, delay, or defraud any creditor of the debtor;

The Court specifically mentioned a couple of badges of fraud, including that the Townleys continued to live in the house that was property of the trust without paying rent or utilities, and that they transferred almost all of their assets to the trust, which prevented them from being able to pay their taxes or other bills. The Court also concluded that, since the couple made no rent payments to the trust for the home that was trust property that they continued to live in, the affairs of the trust and the couple were intertwined and could not be distinguished. Therefore, the trust was actually the Townleys' nominee and alter ego, and so the IRS could directly foreclose upon its assets.

14. ***U.S. v. Evseroff*, Slip Copy (E.D.N.Y. 2006)**

Jacob Evseroff, a former Assistant District Attorney in Kings County, New York, participated in a number of tax shelters between 1978 and 1982. Although he believed that the positions he had taken were legitimate, in December of 1990, after an income tax audit, the IRS informed Evseroff that he owed $227,282 in unpaid taxes and penalties. A month later, the IRS updated the amount to approximately $800,000. The IRS seized Evseroff's retirement home worth $230,000 in September of 1991, and on January 9, 1992, Evseroff received a notice of deficiency stating that his total tax liability was still in excess of $700,000. Evseroff filed a petition in April of 1992 with the Tax Court, challenging the IRS's notice of deficiency. Then, on June 3, 1992, he executed a trust document with his sons as beneficiaries. He initially funded the trust with $220,000, and then, transferred his New York home to it. In November of that same year, the Tax Court entered a judgment against Evseroff for $769,113. The case eventually ended up in the Federal district Court for the Eastern District of New York on the issues of (1) fraudulent transfer based on constructive intent, (2) fraudulent transfer based on actual intent, and (3) alter ego.

The Court ruled that Evseroff's transfers to the trust were not fraudulent, because they did not leave him insolvent, and because his primary motivation for establishing the trust was estate planning, not asset protection. Therefore, the trust assets could not be used to satisfy the tax judgment against Evseroff.