

**SUPREME COURT OF THE STATE OF NEW YORK**  
*Appellate Division, Fourth Judicial Department*

1552

CA 17-00996

PRESENT: WHALEN, P.J., CENTRA, PERADOTTO, LINDLEY, AND WINSLOW, JJ.

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IN THE MATTER OF THE JUDICIAL SETTLEMENT OF  
THE INTERMEDIATE ACCOUNT OF HSBC BANK USA,  
N.A., AS TRUSTEE OF THE TRUST UNDER AGREEMENT                      MEMORANDUM AND ORDER  
DATED JANUARY 21, 1957, SEYMOUR H. KNOX, GRANTOR,  
FOR THE BENEFIT OF THE ISSUE OF SEYMOUR H.  
KNOX, III, FOR THE PERIOD JANUARY 21, 1957 TO  
NOVEMBER 3, 2005.

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HSBC BANK USA N.A., PETITIONER-APPELLANT,

V

SEYMOUR H. KNOX, IV, W.A. READ KNOX, AVERY KNOX,  
HELEN KNOX KEILHOLTZ, OBJECTANTS-RESPONDENTS,  
ET AL., RESPONDENTS.

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HARRIS BEACH PLLC, BUFFALO (RICHARD T. SULLIVAN OF COUNSEL), FOR  
PETITIONER-APPELLANT.

HOGANWILLIG, PLLC, AMHERST (LINDA LALLI STARK OF COUNSEL), FOR  
OBJECTANTS-RESPONDENTS.

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Appeal from an order of the Surrogate's Court, Erie County  
(Barbara Howe, S.), entered October 26, 2016. The order, insofar as  
appealed from, granted that part of the motion of objectants seeking  
leave to amend their objections to an accounting.

It is hereby ORDERED that the order insofar as appealed from is  
unanimously reversed on the law without costs and the motion is  
denied.

Memorandum: Petitioner appeals from an order insofar as it  
granted that part of the motion of objectants (hereafter, Income  
Beneficiaries) seeking leave to amend their objections to an  
accounting to conform to the proof presented during the 2010 trial.  
We agree with petitioner that Surrogate's Court erred in granting that  
part of the motion inasmuch as "the proposed amendment is lacking in  
merit" (*Manufacturers & Traders Trust Co. v Reliance Ins. Co.*, 8 AD3d  
1000, 1001 [4th Dept 2004]). The Income Beneficiaries sought to amend  
their objections to an accounting to assert, verbatim, the objections  
that were asserted by the guardian ad litem related to the same  
accounting. We previously determined that those same objections  
lacked merit (*Matter of HSBC Bank USA, N.A. [Knox]*, 98 AD3d 300 [4th  
Dept 2012], *lv dismissed* 20 NY3d 1056 [2013]). Inasmuch as our prior

decision is the law of the case, the Surrogate was bound by our decision and erred in granting relief "that was inconsistent with this Court's decision in the prior appeal" (*J.N.K. Mach. Corp. v TBW, Ltd.*, 98 AD3d 1259, 1260 [4th Dept 2012]).

Entered: February 2, 2018

Mark W. Bennett  
Clerk of the Court