

Matter of Clark
2018 NY Slip Op 31273(U)
June 14, 2018
Surrogate's Court, Nassau County
Docket Number: 53551
Judge: Margaret C. Reilly
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**SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

**In the Matter of the Account of Proceedings of
JP Morgan Chase Bank, N.A.
as Trustee of the Trust created under the Will of**

DECISION

**File No. 53551
Dec. No. 33942**

LOUISE S. CLARK,

Deceased.

**In the Matter of the Account of Proceedings of
JP Morgan Chase Bank, N.A.
as Trustee of the Trust created under the Will of**

**File No. 87038
Dec. No. 33943**

LeGRAND L. CLARK,

Deceased.

PRESENT: HON. MARGARET C. REILLY

The following papers were considered in the preparation of this decision:

<u>In Connection with the Trust Under the Will of Louise S. Clark</u>	
Third Amended Petition for Judicial Settlement of the Fifth and	
Intermediate Accounting of Trustee.....	1
Account for April 25, 1978 through December 31, 2006.	2
Account for December 31, 2006 through July 31, 2012.	3
Fifth Supplemental and Amended Notice of Appearance and Demand. . .	4
Affidavit of Legal Services (Thomson Hine LLP and	
Gould & Wilkie LLP).	5

<u>In Connection with the Trust Under the Will of LeGrand L. Clark</u>	
Third Amended Petition for Judicial Settlement of the Fourth and	
Intermediate Accounting of Trustee.....	1
Account for April 4, 1976 through December 31, 2006.	2
Account for December 31, 2006 through July 31, 2012.	3
Fifth Supplemental and Amended Notice of Appearance and Demand. . .	4
Affidavit of Legal Services (Thomson Hine LLP and	
Gould & Wilkie LLP).	5

Submitted for decision are the third amended petitions for the judicial settlement of two intermediate accounts filed by JPMorgan Chase Bank, N.A., as trustee of the trust created under the last will and testament of Louise S. Clarke, and as trustee of the trust created under the last will and testament of LeGrand L. Clark.

RELIEF SOUGHT BY THE PETITIONER

Relief Sought in Both Petitions

With respect to both petitions, the following relief is sought: (1) that the accounts of the petitioner as successor trustee under the wills, as presented herewith, be judicially settled and allowed; (2) that this court determine that LeGrand L. Clark, III is the only person entitled to the share of the trusts which was formerly paid to LeGrand L. Clark, Jr.; (3) that this court determine that Charles P. Clark, Bruce E. Clark, and Karen Clark Dunning are the only persons entitled in equal shares to the share of the income of the trusts which was formerly paid to Pamela M. Clark; (4) that this court determine that Linford Edward Stiles, Jr., Elizabeth Stiles Siegel, and Catharine L. Stiles Henderson are the only persons entitled in equal shares to the share of the income of the trusts which was formerly paid to Olive C. Stiles; and (5) that this court determine that Laurie E. Clark Sutka, Allan Gray Clark, Andrea H. Clark Cefarelli, DruAnn Clark Price, and James Averill Clark are the only persons entitled in equal shares to the share of the income of the trusts which was formerly paid to Allan Belden Clark.

The trustees also ask that process be issued to all necessary parties who have not appeared to show cause why the relief requested should not be granted, and that an order be granted directing the service of process pursuant to the provisions of Article 3 of the SCPA upon such persons named in paragraph [19] whose names or whereabouts are unknown and cannot be ascertained or who may be persons on whom service by personal delivery cannot be made, and that this court grant such other and further relief as this court may determine to be just and proper.

Relief Sought For Trust Under the Will of Louise S. Clark

With respect to the petition filed in connection with the trust created under the will of Louise S. Clark, the following additional relief is sought: (6) that this court approve the payment of legal fees and disbursements to Gould & Wilkie in the sum of \$49,109.56 for services rendered to petitioner, and legal fees and disbursements to Thompson Hine LLP in the sum of \$31,056.78 for services rendered to the petitioner for the period April 25, 1978 through December 31, 2005,¹ all from the principal of the trust; (7) that this court approve the payment of legal fees and disbursements to Debra A. Arena, Esq. in the sum of \$1,800.89 for services rendered to the petitioner on May 12, 2009 and September 8, 2010, all from the principal of the trust; (8) that this court direct the payment of legal fees to Thompson Hine LLP in the sum of \$53,391.10 for services rendered to the petitioner for the period from

¹ The petition filed in connection with each trust indicates that this billing period concluded on December 31, 2006, but the contemporaneous time records filed with the court reflect an end date of December 31, 2005, with the subsequent billing period commencing on January 18, 2006.

January 18, 2006 through July 31, 2012, and reimbursement to Thompson Hine LLP in the sum of \$11,004.47 for disbursements made on behalf of the petitioner for the period from June 15, 2006 through July 31, 2012, all from the principal of the trust; and (9) that this court direct that the principal receiving and paying commissions owed to the petitioner as reflected in Schedule "I" of the account shall be paid to the petitioner from the principal of the trust in the amount of \$13,553.48.

Relief Sought For Trust Under the Will of LeGrand L. Clark

With respect to the petition filed in connection with the trust created under the will of LeGrand L. Clark, the following additional relief is sought: (6) that this court approve the payment of legal fees and disbursements to Gould & Wilkie in the sum of \$22,050.42 for services rendered to petitioner, and legal fees and disbursements to Thompson Hine LLP in the sum of \$16,055.22 for services rendered to the petitioner for the period August 4, 1976 through December 31, 2005, all from the principal of the trust; (7) that this court approve the payment of legal fees and disbursements to Debra A. Arena, Esq. in the sum of \$1,800.90 for services rendered to the petitioner on May 12, 2009 and September 8, 2010, all from the principal of the trust; (8) that this court direct the payment of legal fees to Thompson Hine LLP in the sum of \$26,695.55 for services rendered to the petitioner for the period from January 18, 2006 through July 31, 2012, and reimbursement to Thompson Hine LLP in the sum of \$5,502.24 for disbursements made on behalf of the petitioner for the period from June 15, 2006 through July 31, 2012, all from the principal of the trust; and (9) that this court

direct that the principal receiving and paying commissions owed to the petitioner as reflected in Schedule "I" of the account shall be paid to the petitioner from the principal of the trust in the amount of \$7,274.25.

BACKGROUND

Estate of Louise S. Clark

Louise S. Clark died a resident of Plandome, Nassau County on November 17, 1948. The last will and testament of Louise S. Clark was admitted to probate by this court on December 2, 1948, and letters testamentary and letters of trusteeship issued to her son, Theodore S. Clark, and to Frederick S. Tipson. Their account as the executors of the estate of Louise S. Clark was settled by decree dated April 23, 1951, and they delivered the estate assets to themselves as the co-trustees of the trust created under the will of Louise S. Clark.

On November 5, 1962, the first intermediate account of the trustees, covering the period from April 23, 1951 through May 31, 1962, was settled by decree.

On January 2, 1964, co-trustee Frederick S. Tipson died. His surviving spouse, Lynn B. Tipson, was appointed to serve as the executor of his estate.

On April 27, 1964, letters of trusteeship were issued to Chemical Bank as successor trustee of the trust created under the will of Louise S. Clark.

On March 17, 1966, co-trustee and income beneficiary Theodore S. Clark died. His surviving spouse, May M. Clark, was appointed to serve as the executor of his estate. Theodore S. Clark was not survived by issue. Pursuant to the terms of the trust, the income

that was formerly payable to him became payable to May M. Clark.

On March 2, 1967, a decree was issued settling a trustees' account filed by Lynn B. Tipson, for May 31, 1962 through January 2, 1964, as the executor of the estate of co-trustee Frederick S. Tipson, and by May M. Clark, for May 31, 1962 through March 17, 1966, as the executor of the estate of co-trustee Theodore S. Clark, and by Chemical Bank, for April 27, 1964 through May 19, 1966, as the successor trustee.

On January 12, 1976, the second intermediate trustee's account, filed by Chemical Bank, for May 19, 1966 through March 7, 1973, was settled by decree.

On August 16, 1979, the third intermediate account of Chemical Bank, for March 7, 1973 through August 4, 1976, was settled by decree.

On July 16, 1980, the fourth intermediate account of Chemical Bank, for August 4, 1976 through April 25, 1978, was settled by decree.

More than 35 years have elapsed since the settlement of the prior intermediate account filed in connection with the trust under the will of Louise S. Clark. The petitioning trustee is JP Morgan Chase Bank, N.A. (the petitioner), as the successor to Chemical Bank.

Estate of LeGrand L. Clark

LeGrand L. Clark died a resident of Plandome, Nassau County on October 7, 1959. The last will and testament of LeGrand L. Clark was admitted to probate by this court on October 22, 1959, and letters testamentary and letters of trusteeship issued to his son, Theodore S. Clark, and to Frederick S. Tipson. Their account as the executors of the estate

of LeGrand L. Clark was settled by decree dated December 17, 1963, and they delivered the estate assets to themselves as the trustees of the trust created under the will of LeGrand L. Clark.

On January 2, 1964, co-trustee Frederick S. Tipson died, and his surviving spouse, Lynn B. Tipson, was appointed to serve as the executor of his estate.

On May 1, 1964, letters of trusteeship were issued to Chemical Bank as successor trustee of the trust created under the will of LeGrand L. Clark.

On March 17, 1966, co-trustee and income beneficiary Theodore S. Clark died, and his surviving spouse, May M. Clark, was appointed to serve as the executor of his estate.

On May 24, 1967, a decree was issued settling a trustees' account filed by Lynn B. Tipson, for November 4, 1963 through January 2, 1964, as the executor of the estate of co-trustee Frederick S. Tipson, and by May M. Clark, for November 4, 1963 through March 17, 1966, as the executor of the estate of co-trustee Theodore S. Clark, and by Chemical Bank, for May 1, 1964 through May 19, 1966, as the successor trustee.

On January 12, 1976, the second intermediate trustee's account, filed by Chemical Bank, for May 19, 1966 through March 7, 1973, was settled by decree.

On August 16, 1979, the third intermediate account of Chemical Bank, for March 7, 1973 through August 4, 1976, was settled by decree.

More than 35 years have elapsed since the settlement of the prior intermediate account filed in connection with the trust under the will of LeGrand L. Clark. The petitioning trustee

is JP Morgan Chase Bank, N.A. (the petitioner), as the successor to Chemical Bank.

THE ACCOUNTS

The Account for the Trust Under the Will of Louise S. Clark

In connection with the petition filed in connection with the trust created under the will of Louise S. Clark, the trustee is now accounting for the period from April 25, 1978 through December 31, 2006 (the petitioner's fifth and intermediate account), supplemented by the petitioner's subsequent and intermediate account for the period December 31, 2006 through July 31, 2012 (the supplemental account). Objections were filed by counsel for the income beneficiaries of the trust, but counsel subsequently advised the court that all objections were resolved and all proposed filings have been agreed to.

Schedule A of the fifth and intermediate account reflects original principal and subsequent receipts totaling \$1,554,138.97, to which gross increases of \$3,128,434.91 were added, for total principal charges of \$4,682,573.88. This amount was reduced by gross decreases on sales of \$637,103.88, administration expenses totaling \$1,212,157.17, and distributions of \$81,884.52, for total principal credits of \$1,931,145.57. This leaves a principal balance on hand in the amount of \$2,751,428.31, as shown on Schedule G.

Schedule A-1 of the income account shows original income and subsequent receipts of \$3,770,964.57. These income charges were reduced by administration expenses of \$307,402.70 and distributions of \$3,451,957.18, leaving an income balance, as shown on Schedule G-1, of \$11,604.69. The combined total of principal and income on hand is

\$2,763,033.00.

The supplemental account of proceedings covering the period from December 31, 2006 through July 31, 2012 begins with a principal balance plus subsequent receipts totaling \$2,751,441.46. Schedule A-1 shows gross increases of \$1,552,000.47, resulting in total principal charges of \$4,303,441.93. The charges were reduced by gross decreases of \$741,331.03, administration expenses of \$237,161.58, and distributions of \$171,460.90, leaving a principal balance on hand in the amount of \$3,153,488.42.

Schedule A-2 of the supplemental income account shows original income and subsequent receipts of \$668,346.25. These income charges were reduced by administration expenses of \$77,056.56 and distributions of \$584,050.95, leaving an income balance, as shown on Schedule G-1, of \$7,238.74. The combined total of principal and income on hand is \$3,160,727.16.

The Account for the Trust Under the Will of LeGrand L. Clark

In connection with the petition filed in connection with the trust created under the will of LeGrand L. Clark, the trustee is now accounting for the period from August 4, 1976 through December 31, 2006 (the petitioner's fourth and intermediate account), supplemented by the petitioner's subsequent and intermediate account for the period December 31, 2006 through July 31, 2012 (the supplemental account). Objections were filed by counsel for the income beneficiaries of the trust, but counsel subsequently advised the court that all objections were resolved and all proposed filings have been agreed to.

Schedule A of the fourth and intermediate account reflects original principal and subsequent receipts totaling \$710,145.53, to which gross increases of \$1,720,787.13 were added, for total principal charges of \$2,430,932.66. This amount was reduced by gross decreases on sales of \$376,662.00, administration expenses totaling \$602,620.22, and distributions of \$49,716.18, for total principal credits of \$1,028,998.40. This leaves a principal balance on hand in the amount of \$1,401,934.26, as shown on Schedule G.

Schedule A-1 of the income account shows original income and subsequent receipts of \$1,879,399.93. These income charges were reduced by administration expenses of \$173,267.49 and distributions of \$1,703,383.86, leaving an income balance, as shown on Schedule G-1, of \$2,748.58. The combined total of principal and income on hand is \$1,404,682.84.

The supplemental account of proceedings covering the period from December 31, 2006 through July 31, 2012 begins with a principal balance plus subsequent receipts totaling \$1,402,010.22. Schedule A-1 shows gross increases of \$780,675.35, resulting in total principal charges of \$2,182,685.57. The charges were reduced by gross decreases of \$301,635.10, administration expenses of \$167,117.31, and distributions of \$65,176.92, leaving a principal balance on hand in the amount of \$1,648,756.24.

Schedule A-2 of the supplemental income account shows original income and subsequent receipts of \$337,727.93. These income charges were reduced by administration expenses of \$41,870.56 and distributions of \$293,488.97, leaving an income balance, as

shown on Schedule G-1, of \$2,368.40. The combined total of principal and income on hand is \$1,651,124.64.

DETERMINATION OF TRUST BENEFICIARIES

The trustee has asked the court to make the following determinations with reference to both trusts:

1. That LeGrand L. Clark, III is the only person entitled to the share of the trusts which was formerly paid to LeGrand L. Clark, Jr.

2. That Charles P. Clark, Bruce E. Clark, and Karen Clark Dunning are the only persons entitled in equal shares to the share of the income of the trusts which was formerly paid to Pamela M. Clark.

3. That Linford Edward Stiles, Jr., Elizabeth Stiles Siegel, and Catharine L. Stiles Henderson are the only persons entitled in equal shares to the share of the income of the trusts which was formerly paid to Olive C. Stiles; and

4. That Laurie E. Clark Sutka, Allan Gray Clark, Andrea H. Clark Cefarelli, DruAnn Clark Price, and James Averill Clark are the only persons entitled in equal shares to the share of the income of the trusts which was formerly paid to Allan Belden Clark.

Beneficiaries of the Trust Created Under the Will of Louise S. Clark

A determination of the parties presently entitled to receive the income generated by the trust created under the will of Louise S. Clark requires that the court review the pertinent testamentary language as well as the pertinent decisions and decrees subsequently issued by

the court. In addition, the court notes that the terms of the trust remain in force as Theodore Gray Clark, one of the measuring lives of the trust, is still alive.

Pursuant to Article Fourth of her will, Louise S. Clark provided the following:

“FOURTH: I give all of the shares of the capitol stock of T.W. & C.B. Sheridan Company, a New York corporation, The Sheridan Iron Works, a New York corporation, and Sheridan Machine Company, a Pennsylvania corporation, which I shall own at the date of my death, to my executors and their survivor or survivors, successor or successors, but in trust, nevertheless, and, as trustee, to own, hold, manage, vote and sell, subject to the provisions of clause SEVENTH, and to invest and reinvest the proceeds of the sale of such shares of stock, to collect and receive the income and profits arising therefrom and to disburse the net income and to distribute the net principal subject and pursuant to the following directions:

1. Such trust shall continue during the lives of my two youngest grandchildren who are living at the date of my death.

2. During the continuance of such trust, the entire net income shall be paid, at fixed intervals, in equal shares, to my children, Theodore S. Clark, Allen G. Clark, Edward V. Clark, Olive C. Stiles and LeGrand L. Clark, Jr. If any of my children shall die prior to the date of my death or during the continuance of such trust, the share of such net income which he or she would have received if living shall be paid in equal shares, per stirpes and not per capita, to his or her descendants. If such child who died prior to the date of my death or dies during the continuance of such trust is a son and he shall leave no descendant but shall leave a widow surviving him, such widow shall be entitled to receive that share of the net income which the descendant of such son would have received if any such descendant were living. If any of my children shall die prior to the date of my death or during the continuance of such trust and shall leave neither a descendant not a widow surviving him or her, the share of the net income which he or she would have received from time to time if he or she were living shall be distributed, per stirpes and not per capita, among my children and descendants who are in receipt of the remainder of the net income from such trust. Each distribution of net income shall be governed by the conditions which exist as the date when such distribution is made.

3. Upon the termination of such trust, the net principal thereof shall be paid to and distributed per stirpes and not per capita, among my descendants then living.”

The will provides that if a child of Louise S. Clark shall die during the term of the trust created for such child, then such deceased child's share of available net income shall be paid in equal shares, per stirpes, to the child's descendants or, if the child is a son and left no descendants, then to the child's widow. The will contains no provisions for the distribution of income in the event of the death of a grandchild, great-grandchild, or spouse of a child of Louise S. Clark who was a trust income beneficiary.

Pursuant to paragraph (1) of Article Fourth, the measuring lives for the term of the trust were Thomas Sheridan Clark and Theodore Gray Clark, the two youngest grandchildren of Louise S. Clark who were alive at her death. Thomas Sheridan Clark died intestate and without issue on November 18, 1970, and no administrator was appointed for his estate.

On March 17, 1966, income beneficiary Theodore S. Clark died. He was not survived by issue. Pursuant to the terms of Article Fourth (2) of the trust, the income that was formerly payable to him became payable to his widow, May M. Clark.

On January 12, 1976, this court determined that the income formerly payable to Thomas Sheridan Clark became payable in equal shares to three grandchildren of Louise S. Clark: Allen Belden Clark; Judith Clark Elam; and Theodore Gray Clark, the siblings of grandchild Thomas Sheridan Clark, who died unmarried and without issue.

On August 13, 1975, income beneficiary Edward V. Clark died. The income formerly payable to Edward V. Clark became payable to his sole surviving child, Edward D. Clark. Following the death of Edward D. Clark on June 10, 1976, this court determined, on May 10,

1979, that the income payable to him became payable upon his death to his four surviving children: Pamela M. Clark; Charles P. Clark; Bruce E. Clark; and Karen Clark Dunning.

On December 31, 1977, May M. Clark, the widow of Theodore S. Clark, died. Following the death of May M. Clark, this court determined, on June 24, 1980, that the income of the trust formerly payable to May M. Clark became payable as follows: 25% to the decedent's daughter, Olive C. Stiles; 25% to the decedent's son, LeGrand L. Clark, Jr.; 25% to be divided equally among: Pamela Clark; Charles P. Clark; Bruce E. Clark; and Karen Clark Dunning, the decedent's grandchildren and children of deceased son, Edward D. Clark; and 25% to be divided equally among: Allen Belden Clark; Judith Clark Elam; and Theodore Gray Clark, the decedent's grandchildren and children of deceased son, Allen G. Clark.

On July 17, 1998, LeGrand L. Clark, Jr., died, survived by one son, LeGrand L. Clark, III. The petitioner believes that the income formerly payable to LeGrand L. Clark, Jr. became payable to his sole surviving son.

On June 18, 1999, Pamela M. Clark, a great-grandchild of Louise S. Clark, died. As the will contains no provision for the distribution of income upon the death of a great-grandchild who was an income beneficiary of the trust, the petitioner believes that the income formerly payable to Pamela M. Clark became payable in equal shares to her surviving siblings: Charles P. Clark; Bruce E. Clark; and Karen Clark Dunning.

On May 29, 2004, Olive C. Stiles, a child of Louise S. Clark, died, survived by three children: Linford Edward Stiles, Jr.; Elizabeth Stiles Siegel; and Catharine L. Stiles Henderson. The petitioner believes that the income formerly payable to Olive C. Stiles is payable to her three surviving children.

On November 6, 2006, Allen Belden Clark, a grandchild of Louise S. Clark, died, survived by five children: Laurie E. Clark Sutka; Allan Gray Clark; Andrea H. Clark Cefarelli; DruAnn Clark Price; and James Averill Clark. As the will contains no provision for the distribution of income upon the death of a grandchild who was an income beneficiary of the trust, the petitioner believes that the income formerly payable to Allen Belden Clark is payable in equal shares to his five surviving children.

Beneficiaries of the Trust Created Under the Will of LeGrand L. Clark

A determination of the parties presently entitled to receive the income generated by the trust created under the will of LeGrand L. Clark requires that the court review the pertinent testamentary language, as well as the pertinent decisions and decrees subsequently issued by the court. In addition, the court notes that the terms of the trust remain in force as LeGrand L. Clark, III, one of the measuring lives of the trust, is still alive.

Pursuant to Article Fifth of his will, LeGrand L. Clark provided the following:

“Fifth: I give all of the shares of the capitol stock of T.W. & C.B. Sheridan Company, a New York corporation, which I shall own at the date of my death, to my executors and their survivor or survivors, successor or successors, but in trust, nevertheless, and, as trustee, to own, hold, manage, vote and sell, subject to the provisions of clause Eighth, and to invest and reinvest the proceeds of the sale of such shares of stock; to collect and receive

the income and profits arising therefrom and to disburse the net income and to distribute the net principal subject and pursuant to the following directions:

1. Such trust shall continue during the lives of my two youngest grandchildren who are living at the date of my death and who do not have a parent in comon.

2. During the continuance of such trust, the entire net income shall be paid, subject to the preceding provisions of this will, at fixed intervals, in equal shares, to my children, Theodore S. Clark, Allen G. Clark, Edward V. Clark, Olive C. Stiles and LeGrand L. Clark, Jr. If any of my children shall die prior to the date of my death or during the continuance of such trust, the share of such available net income which he or she would have received if living shall be paid in equal shares per stirpes and not per capita, to his or her descendants.

3. Upon the termination of such trust, the net principal thereof shall be paid to and distributed per stirpes and not per capita, among my descendants who are then living.”

The will of LeGrand L. Clark provides that if any of his children shall die during the continuance of the trust for such child, then such child’s share of the available net income shall be paid in equal shares, per stirpes, to such child’s descendants. However, the will does not provide for the distribution of income in the event of the death of a grandchild or great-grandchild who was an income beneficiary of the trust.

On March 17, 1966, Theodore S. Clark died. He was not survived by issue.

On May 24, 1967, this court made the following determinations: (a) pursuant to paragraph Fifth (1) above, the measuring lives for the term of the trust under the will of LeGrand L. Clark were LeGrand L. Clark, III, and Thomas Sheridan Clark; (b) the income formerly payable to Theodore S. Clark became payable to: three surviving children of LeGrand L. Clark: Edward V. Clark; Olive C. Stiles; and LeGrand L. Clark, Jr.; and the issue of Allan G. Clark, a deceased son of LeGrand L. Clark, (excluding only Thomas Sheridan Clark), and that the rights of these individuals to share in such income during the term of the trust was subject to divestment upon their prior death and to possible readjustment to other

members of the class while the trust continued.

Thomas Sheridan Clark died intestate and without issue on November 18, 1970, and no administrator was appointed for his estate. On January 12, 1976, this court determined that the income formerly payable to Thomas Sheridan Clark became payable in equal shares to three grandchildren of Louise S. Clark: Allen Belden Clark; Judith Clark Elam; and Theodore Gray Clark.

On August 13, 1975, income beneficiary Edward V. Clark died. The income formerly payable to Edward V. Clark became payable to his sole surviving child, Edward D. Clark. Following the death of Edward D. Clark on June 10, 1976, this court determined, on May 10, 1979, that the income payable to him became payable upon his death to his four surviving children: Pamela M. Clark; Charles P. Clark; Bruce E. Clark; and Karen Clark Dunning.

On July 17, 1998, LeGrand L. Clark, Jr., died, survived by one son, LeGrand L. Clark, III. The petitioner believes that the income formerly payable to LeGrand L. Clark, Jr. became payable to his sole surviving son.

On June 18, 1999, Pamela M. Clark, a great-grandchild of LeGrand L. Clark, died. As the will contains no provision for the distribution of income upon the death of a great-grandchild who was an income beneficiary of the trust, the petitioner believes that the income formerly payable to Pamela M. Clark became payable in equal shares to her surviving siblings: Charles P. Clark; Bruce E. Clark; and Karen Clark Dunning.

On May 29, 2004, Olive C. Stiles, a child of LeGrand L. Clark, died, survived by three children: Linford Edward Stiles, Jr.; Elizabeth Stiles Siegel; and Catharine L. Stiles Henderson. The petitioner believes that the income formerly payable to Olive C. Stiles is

payable to her three surviving children.

On November 6, 2006, Allen Belden Clark, a grandchild of LeGrand L. Clark, died, survived by five children: Laurie E. Clark Sutka; Allan Gray Clark; Andrea H. Clark Cefarelli; DruAnn Clark Price; and James Averill Clark. As the will contains no provision for the distribution of income upon the death of a grandchild income beneficiary of the trust, the petitioner believes that the income formerly payable to Allen Belden Clark is payable in equal shares to his five surviving children.

Findings of the Court Regarding Beneficiaries of the Trusts

The court makes the following determinations: (A) LeGrand L. Clark, III is the only person entitled to the share of the trusts which was formerly paid to LeGrand L. Clark, Jr.; (B) Charles P. Clark, Bruce E. Clark, and Karen Clark Dunning are the only persons entitled in equal shares to the share of the income of the trusts which was formerly paid to Pamela M. Clark; (C) Linford Edward Stiles, Jr., Elizabeth Stiles Siegel, and Catharine L. Stiles Henderson are the only persons entitled in equal shares to the share of the income of the trusts which was formerly paid to Olive C. Stiles; and (D) Laurie E. Clark Sutka, Allan Gray Clark, Andrea H. Clark Cefarelli, DruAnn Clark Price, and James Averill Clark are the only persons entitled in equal shares to the share of the income of the trusts which was formerly paid to Allan Belden Clark.

FEES

“The Surrogate's Court bears the ultimate responsibility for deciding what constitutes a reasonable attorney's fee, and the evaluation of what constitutes a reasonable attorney's fee is a matter within the sound discretion of the court” (*Matter of Goliger*, 58 AD3d 732, 732 [2d Dept 2008] [citations omitted]; *accord*, *Matter of Freeman*, 34 NY2d 1, 9 [1974]; *Matter*

of Potts, 123 Misc 346 [Sur Ct, Columbia County 1924], *affd* 213 App Div 59 [4th Dept 1925], *affd* 241 NY 593 [1925]). In determining what constitutes a reasonable attorney's fee, the court may consider factors such as "the time and labor expended, the difficulty of the questions involved and the required skill to handle the problems presented, the attorney's experience, ability, and reputation, the amount involved, the customary fee charged for such services, and the results obtained" (*Matter of Szkambara*, 53 AD3d 502, 502-503 [2d Dept 2008] [citations omitted]; *see Matter of Freeman*, 34 NY2d 1 [1974]). The legal fee must bear a reasonable relationship to the size of the estate (*see Matter of Kaufmann*, 26 AD2d 818 [1st Dept 1966], *affd* 23 NY2d 700 [1968]).

Fees with Respect to the Trust Under the Will of Louise S. Clark

Fees Requested:

The petitioner seeks approval of payment of the following legal fees and disbursements from the principal of the trust under the will of Louise S. Clark:

(A) Gould & Wilkie in the sum of \$49,109.56, and legal fees and disbursements to Thompson Hine LLP in the sum of \$31,056.78, for April 25, 1978 through December 31, 2006.

(B) Thompson Hine LLP in the sum of \$53,391.10 for January 18, 2006 through July 31, 2012, and reimbursement to Thompson Hine LLP in the sum of \$11,004.47 for disbursements from June 15, 2006 through July 31, 2012.

(C) Debra A. Arena, Esq. in the sum of \$1,800.89 for services rendered on May 12, 2009 and September 8, 2010.

Fees Shown in the Fifth and Intermediate Account and the Supplemental Account:

Schedule C of the account reflects payments totaling \$49,101.56 to Gould & Wilkie LLP and payments totaling \$31,056.78 to Thompson Hine LLP.

Schedule C of the supplemental account reflects payments totaling \$1,800.89 to Debra A. Arena, Esq.

Schedule C-1 of the supplemental account reflects unpaid fees of \$53,391.10 due to Thomson Hine LLP for January 18, 2006 through July 31, 2012, plus disbursements of \$11,004.47, for a combined total of \$64,395.57.

Documentation Filed in Support of Fees Requested:

An affidavit of legal services was filed in connection with the legal services provided by Thompson Hine LLP, and by Gould & Wilkie LLP.² Attached to the affidavit are invoices and time records for 1978 through 2012. The time charges shown exceed the fees requested. Counsel states that the reduction in fees reflects an agreement reached between counsel for the petitioner and counsel for the income beneficiaries, whose objections to the account were ultimately withdrawn.

Approval of Fees:

The court has reviewed the affidavit and exhibits and approves the paid and unpaid fees to Thompson Hine LLP and Gould & Wilkie LLP in the amounts requested.

The fees paid to Debra A. Arena, Esq., which were paid in full in 2009 and 2010, are approved.

² The firm of Gould & Wilkie LLP was acquired by and became a part of Thomson Hine LLP on May 2, 2002.

Fees with Respect to the Trust Under the Will of LeGrand L. Clark

Fees Requested:

The petitioner seeks approval of payment of the following legal fees and disbursements from the principal of the trust under the will of LeGrand L. Clark:

(A) Gould & Wilkie in the sum of \$22,050.42, and legal fees and disbursements to Thompson Hine LLP in the sum of \$16,055.22, for August 4, 1978 through December 31, 2006.

(B) Thompson Hine LLP in the sum of \$26,695.55 for January 18, 2006 through July 31, 2012, and reimbursement to Thompson Hine LLP in the sum of \$5,502.24 for disbursements from June 15, 2006 through July 31, 2012.

(C) Debra A. Arena, Esq. in the sum of \$1,800.90 for services rendered on May 12, 2009 and September 8, 2010.

Fees Shown in the Fourth and Intermediate Account and the Supplemental Account:

Schedule C of the account reflects payments totaling \$22,000.00 plus disbursements of \$50.42 to Gould & Wilkie LLP.

Schedule C of the supplemental account reflects payments totaling \$1,800.90 to Debra A. Arena, Esq.

Schedule C-1 of the supplemental account reflects unpaid fees of \$26,695.55 due to Thomson Hine LLP for January 18, 2006 through July 31, 2012, plus disbursements of \$5,502.24, for a combined total of \$32,197.79.

Documentation Filed in Support of Fees Requested:

An affidavit of legal services was filed in connection with the legal services provided

by Thompson Hine LLP, and by Gould & Wilkie LLP. Attached to the affidavit are invoices and time records for 1976 through 2012. The time charges shown exceed the fees requested. Counsel states that the reduction in fees reflects an agreement reached between counsel for the petitioner and counsel for the income beneficiaries, whose objections to the account were ultimately withdrawn.

Approval of Fees:

The court has reviewed the affidavit and exhibits and approves the paid and unpaid fees to Thompson Hine LLP and Gould & Wilkie LLP in the amounts requested.

The fees paid to Debra A. Arena, Esq., which were paid in full in 2009 and 2010, are approved.

CONCLUSIONS

Conclusions with Respect to Both Trusts

Both of the intermediate accounts presently before the court, as supplemented by the petitioner's subsequent and intermediate accounts through July 31, 2012, are judicially settled and allowed.

This court finds that: LeGrand L. Clark, III is the only person entitled to the share of the trusts which was formerly paid to LeGrand L. Clark, Jr.; Charles P. Clark, Bruce E. Clark, and Karen Clark Dunning are the only persons entitled in equal shares to the share of the income of the trusts which was formerly paid to Pamela M. Clark; Linford Edward Stiles, Jr., Elizabeth Stiles Siegel, and Catharine L. Stiles Henderson are the only persons entitled in equal shares to the share of the income of the trusts which was formerly paid to Olive C. Stiles; and Laurie E. Clark Sutka, Allan Gray Clark, Andrea H. Clark Cefarelli, DruAnn Clark Price, and James Averill Clark are the only persons entitled in equal shares to the share

of the income of the trusts which was formerly paid to Allan Belden Clark.

Conclusions with Respect to the Trust Under the Will of Louise S. Clark

The court approves the payment of the following legal fees and disbursements: Gould & Wilkie in the sum of \$49,109.56, which has been paid; Thompson Hine LLP in the sum of \$31,056.78 for the period April 25, 1978 through December 31, 2005, which has been paid; and Thompson Hine LLP in the sum of \$53,391.10 for the period from January 18, 2006 through July 31, 2012, and reimbursement to Thompson Hine LLP in the sum of \$11,004.47 for disbursements made from June 15, 2006 through July 31, 2012, which remain unpaid.

The court approves the total fee of \$1,800.89 paid to Debra A. Arena, Esq., all of which has been paid in full.

The court approves the principal receiving and paying commissions as reflected in Schedule I, subject to audit.

Conclusions with Respect to the Trust Under the Will of LeGrand L. Clark

The court approves the payment of the following legal fees and disbursements: Gould & Wilkie in the sum of \$22,050.42, which has been paid; Thompson Hine LLP in the sum of \$16,055.22 for the period August 4, 1976 through December 31, 2005, which has been paid; Thompson Hine LLP in the sum of \$26,695.55 for the period from January 18, 2006 through July 31, 2012, and reimbursement to Thompson Hine LLP in the sum of \$5,502.24 for disbursements made from June 15, 2006 through July 31, 2012, for a total of \$32,197.79, which remains unpaid.

The court approves the total fee of \$1,800.89 paid to Debra A. Arena, Esq., all of which has been paid in full.

The court approves the principal receiving and paying commissions as reflected on Schedule I, subject to audit.

Settle separate decrees.

Dated: June 14, 2018
Mineola, New York

E N T E R:

HON. MARGARET C. REILLY
Judge of the Surrogate's Court

cc: Thomson Hine, LLP
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