

These cached appendixes accompany the opinion published at 2022 NY Slip Op 51400(U).

APPENDIX A

STATE OF NEW YORK
SURROGATE'S COURT : COUNTY OF ERIE

In the Matter of the Intermediate Accounting of
Manufacturers and Traders Trust Company, as
Trustee of the Robert S. Bassett Trust No. 7 of
1974, for the period covering September 7, 1983
through October 18, 2013.

ACCOUNTING BY TRUSTEE

File No. DO-59/A

TO THE SURROGATE'S COURT OF THE COUNTY OF ERIE:

The undersigned does hereby render the account of the proceedings for the period from
September 7, 1983 through October 18, 2013. This is an intermediate account.

SUMMARY STATEMENT

(Period covered: 09/07/83 through 10/18/13)

AS TO PRINCIPAL

CHARGES:

Amount shown by Schedule A		
(Principal Received).....	\$ 741,897.18	
(Additional Principal Receipts).....	<u>1,723,190.08</u>	
	\$ 2,465,087.26	
Amount shown by Schedule A-1		
(Realized increases on principal)...	2,262,993.93	
Amount shown by Schedule G		
(Unrealized increases on principal).....	<u>366,167.10</u>	
TOTAL PRINCIPAL CHARGES.....		\$ 5,094,248.29

CREDITS:

Amount shown by Schedule B		
(Realized decreases on principal)...	\$ 660,187.77	
Amount shown by Schedule C		
(Administration expenses chargeable		
to principal).....	780,779.70	
Amount shown by Schedule E		
(Distributions of principal).....	1,348,568.11	
Amount shown by Schedule G		
(Unrealized decreases on principal).....	<u>6,713.85</u>	
TOTAL PRINCIPAL CREDITS.....		\$ 2,796,249.43
Principal Remaining on hand shown by		
Schedule G.....		<u>2,297,998.86</u>
		\$ 5,094,248.29

SUMMARY STATEMENT (cont'd)

(Period covered: 09/07/83 through 10/18/13)

AS TO INCOME

CHARGES:

Amount shown by Schedule A-2 (Income Collected).....	\$ 4,757,357.58
Amount shown by Schedule A-3 (Realized increases on income).....	0.00
Amount shown by Schedule G-1 (Unrealized increases on income).....	0.00
TOTAL INCOME CHARGES.....	\$ 4,757,357.58

CREDITS:

Amount shown by Schedule B-1 (Realized decreases on income).....	\$ 72.32
Amount shown by Schedule C-2 (Administration expenses chargeable to income).....	224,782.86
Amount shown by Schedule E-1 (Distributions of income).....	4,530,337.49
Amount shown by Schedule G-1 (Unrealized decreases on income).....	0.00
TOTAL INCOME CREDITS.....	\$ 4,755,192.67
Balance of undistributed income remaining on hand as shown by Schedule G-1.....	2,164.91
	\$ 4,757,357.58

APPENDIX B

STATE OF NEW YORK
SURROGATE'S COURT : COUNTY OF ERIE

In the Matter of the Intermediate Accounting of
Manufacturers and Traders Trust Company, as
Trustee of the Robert S. Bassett Trust No. 7 of
1974, for the period covering September 7, 1983
through October 18, 2013.

ACCOUNTING BY TRUSTEE

File No. DO-0059/B

TO THE SURROGATE'S COURT OF THE COUNTY OF ERIE:

The undersigned does hereby render the account of the proceedings for the period from
October 19, 2013 through May 15, 2017. This is an intermediate account.

SUMMARY STATEMENT

(Period covered: 10/19/13 through 05/15/17)

AS TO PRINCIPAL

CHARGES:

Amount shown by Schedule A		
(Principal Received).....	\$ 1,938,545.61	
(Additional Principal Receipts).....	241.79	
	<u>\$ 1,938,787.40</u>	
Amount shown by Schedule A-1		
(Realized increases on principal)...	317,423.68	
Amount shown by Schedule G		
(Unrealized increases on principal).....	<u>258,165.05</u>	
TOTAL PRINCIPAL CHARGES.....		\$ 2,514,376.13
		=====

CREDITS:

Amount shown by Schedule B		
(Realized decreases on principal)...	\$ 54,074.49	
Amount shown by Schedule C		
(Administration expenses chargeable		
to principal).....	242,938.31	
Amount shown by Schedule E		
(Distributions of principal).....	97,743.88	
Amount shown by Schedule G		
(Unrealized decreases on principal).....	<u>8,552.11</u>	
TOTAL PRINCIPAL CREDITS.....		\$ 403,308.79
Principal Remaining on hand shown by		
Schedule G.....		<u>2,111,067.34</u>
		\$ 2,514,376.13
		=====

SUMMARY STATEMENT (cont'd)

(Period covered: 10/19/13 through 05/15/17)

AS TO INCOME

CHARGES:

Amount shown by Schedule A-2 (Income Collected).....\$	218,030.36
Amount shown by Schedule A-3 (Realized increases on income).....	0.00
Amount shown by Schedule G-1 (Unrealized increases on income).....	0.00
TOTAL INCOME CHARGES.....\$	218,030.36

CREDITS:

Amount shown by Schedule B-1 (Realized decreases on income).....\$	0.00
Amount shown by Schedule C-2 (Administration expenses chargeable to income).....	36,628.53
Amount shown by Schedule E-1 (Distributions of income).....	179,351.38
Amount shown by Schedule G-1 (Unrealized decreases on income).....	0.00
TOTAL INCOME CREDITS.....\$	215,979.91
Balance of undistributed income remaining on hand as shown by Schedule G-1.....	2,050.45
	\$ 218,030.36

STATE OF NEW YORK)
 : SS
COUNTY OF ERIE)

KAREN CUMMINS, being duly sworn, deposes and says that:

1. She is a Vice President of Manufacturers and Traders Trust Company, the Trustee of the Robert S. Bassett Trust No. 7 of 1974.


2. The foregoing Account contains, to the best of her knowledge and belief, a full and true statement of all receipts and disbursements made in connection with said Trust, and of all monies and properties belonging to said Trust which came into the hands of the Trustee or were received by any other person by its order or authority or for its use during the period covered by said Account.

3. Your deponent does not know of any error or omission in said Account to the prejudice of any creditor of, or person interested in, said Trust.



Karen Cummins, Vice President

Subscribed and sworn to before me
this 30th day of June, 2017.



Notary Public

NICOLE GRAVIUS
PUBLIC STATE OF NEW YORK
ERIE COUNTY
LIC. #01GR6226481
COMM. EXP. 11/06/18

APPENDIX C

I co-founded a personal money management firm known as Westley Wolcott (1971-1972) and was a personal portfolio manager with National Newark & Essex Bank (1969-1971). In these positions I directly oversaw trust investments, and supervised investment professionals.

3. I am a Chartered Financial Analyst. I am a member of the New York Society of Security Analysts and the Association for Investment Management and Research. Since retiring from U.S. Trust, I have served as an expert witness in trust and investment matters and have acted as a consultant to law firms on those types of matters. I also serve as a trustee of a family foundation. From 2008 through 2011, I was a member of the Board of Directors of Morgan Stanley Trust Co. Since 2011, I have sat on the Board of Directors for Fiduciary Trust Company. Attached as Exhibit A to this affidavit is my curriculum vitae. Attached as Exhibit B is a list of the documents I have reviewed in preparing this affidavit.

4. Throughout my career I have attended seminars, reviewed articles, and kept myself informed about the standards governing and best practices for institutional Trustees. I believe that I am qualified to opine on the Trustee's performance in connection with the Robert S. Bassett Trust Number 7.

TRUST AGREEMENT

5. I have reviewed the Trust Agreement for the Robert S. Bassett Trust Number Seven of 1974, and the grantor's intent is clearly spelled out. On the demise of the Grantor Robert S. Bassett, the Trustee will pay net income per capita to his descendants. The Trust also provides for principal distributions for family emergency purposes, in the sole discretion of the Trustee; these distributions are not limited to the proportionate share

of the receiving beneficiary. The Trust terminates at the demise of the last survivor of the presently living descendants of the Grantor and his brother. The Trustee's powers and compensation are also clearly spelled out.

STANDARDS OF PRUDENT PERSON AND PRUDENT INVESTOR ACTS

6. From 1970 to 1994, New York's "Prudent Man Rule" held trustees to the standard of investing in securities that would be acquired by prudent men of discretion and intelligence in matters seeking reasonable income and preservation of capital. Since 1995, New York's "Prudent Investor Act" requires that trustees exercise reasonable care, skill and caution in making investment decisions as a prudent investor would for the entire portfolio guided by the terms of the governing instrument. Trustees must consider economic condition, taxes, diversification and the terms of the governing instrument with regard to current and future distributions.

7. I am aware that the Objectants have argued that a 1984 order by Surrogate Mattina imposed a higher standard of performance by the Trustee. The Objectants are incorrect.

8. Importantly, New York law is clear that trustee's investment decisions must be judged by reviewing the process, and not the performance of the trust investments. The standard looks to the Trustee's conduct, not outcomes or performance. Judge Mattina's order is consistent with the Grantor's intent and fiduciary standards of loyalty and care, and does not impose additional obligations on the Trustee.

REVIEW OF INVESTMENT PROCESS FOR PERIOD OF ACCOUNTING

9. New York law looks to the process and procedures followed by a trustee. Here, the Trustee had an Investment Policy Committee whose responsibility was to evaluate the economic environment, the outlook for interest rates, corporate profits, and inflation. Based on its assessment of those factors, recommendations are made for asset allocation ranges for a series of investment objectives. Those objectives range from low risk, high income, or all fixed income to high risk, low income, or all equity. The committee voting members include the most senior investment officer, heads of asset allocation, fixed income, equity, portfolio management and the chief economist. Non voting members include the deputy general counsel, chief compliance officer and director of investment implementation oversight. The Trustee's Investment Policy Committee's make-up is consistent with best industry practices for New York institutional trustees.

10. The monthly meeting of the Trustee's Investment Policy Committee concludes with a presentation to all portfolio managers, providing insights and asset allocation directives. It was quite clear from my interviews with Richard Scalfani, Steven Gattuso, and Todd Bemiller, coupled with reviews of 2211 examinations of Richard Scalfani, Steven Gattuso, Todd Bemiller, and Todd Murphy, that this process was consistently executed during the accounting period.

11. There was also appropriate oversight of trust account management through the annual review to the Trust Investment Committee of the Board, as required by banking law. Each year, regulators conduct a "Safety and Soundness" review, and the management of trust accounts is a key area of focus. The review, also called a Reg 9 review, details the type of trust, investment objective, asset allocation and ranges against policy, investment performances, tax issues, and liquidity requirements.

12. In addition to the Trust Investment Committee review, the Trustee also conducted an Administrative Committee review. This Committee focuses on the terms of the trust, ability to invade principal, discretionary or non-discretionary, fee language, list of beneficiaries, and a list of discretionary distributions and whether they are documented according to policy. A report for each trust is prepared by the Trust Officer and approved by a second Trust Officer.

13. Consistent with Grantor intent, and based on my knowledge and experience, the account was actively managed to balance the interests of both income and remainder interests. The Trustee's actions were consistent with prudent man and prudent investor standards.

14. With regard to management of this particular trust, it is clear from the portfolio manager Scalfani's notes at inception (1983) that the investment objective was "maximum taxable income with growth for remaindermen" and initially a mix of 50% in both fixed income and equity was implemented. In 1986, the trust received additional funding, and at that time the asset allocation was 45% in both fixed income and equity and 10% cash equivalents. During the late 1980's and early 1990's the equity ratio was reduced to 40% in an effort to raise income, in response to requests from beneficiaries. Declining interest rates and an increased number of beneficiaries made this a difficult challenge. Mr. Scalfani noted in my interview with him that Sheila Blum, Trust Officer, communicated to him that family members were continually requesting more income. There is clear evidence of active portfolio management and reasonable efforts to honor Grantor intent of both maximizing income to current beneficiaries while continuing to allocate a substantial portion of the portfolio to growth.

15. With regard to client communications, each income beneficiary received a monthly statement detailing the investment objective, asset allocation, monthly transactions and annual investment results. The contents of these statements, and their frequency, meet or exceed industry standards. There were also periodic letters, generally from the Trust Officer, to family members. Many of the letters were focused on current income distributions. There was modest turnover in both investment and trust officers during the period of the accounting, but the record demonstrates that there was always clear communications between the two officers regarding any issues that arose. I did not see any evidence that a question posed by a beneficiary was not answered.

16. With regard to the concerns of beneficiaries, I asked for the "client complaint" file, which is required to be maintained and is subject to review by regulators. Until this action, there was no record of any formal complaint or issue concerning possible litigation.

17. Based on my knowledge and experience, it is my opinion that the Trustee acted consistent with the principles of the Prudent Man and Prudent Investor Acts. The Trustee acted consistent with the Grantor's intent and Manufacturers and Traders Trust Company policies and procedures.

INVESTMENT PERFORMANCE

18. While performance of investments is not itself the standard for judging trustees, it is helpful to review investment results as an information point. Hodgson Russ LLP engaged Secure Financial Services Inc. to calculate the annualized rate of return for the Trust for the period from 9/7/1983 to 10/18/2013. Secure Financial Services

computed the annualized return to be 9.22% per year for that period. This was a highly competitive return in comparison to equity and fixed income market returns. For the period 12/31/1982 – 12/31/2013, the Dow Jones Industrial Average (“DJIA”) averaged 10.81%, the Standard & Poor (“S&P”) 500 averaged 11.42% and the US 30 Year Treasury Bond averaged 8.5%. The Consumer Price Index (“CPI”) during the same period averaged 2.87%. A portfolio of 50 % S&P 500 and 50% 30 year Treasury Bonds would have achieved an annual return of 9.9 %.

19. The Objections regarding the performance of the account appear to be based solely on the fact that the account value as noted in the accounting of the Trust began at \$2,465,087.26 and the remaining principal value as of the end date of the accounting was \$2,297,998.86. Those numbers are correct. However, what is not accounted for or represented in the “objections to the accounting” are important financial factors, such as:

- \$4,530,337.49 in income distributions
- \$338,540.00 in federal and New York taxes
- \$372,326.75 in Trustee fees
- \$52,382 .00 in attorney fees

20. The Objections do not challenge any payments of federal or state taxes. The trust agreement provides that the Trustee “shall be entitled to such commissions as may be allowed from time to time by the laws of the State of New York for Testamentary Trustees.” Par. 7. The commissions charged by the Trustee meet this standard. Based on my knowledge and experience, these amounts are typical expenses for a trust of this size, and consistent with industry standards.

21. The Objections also fail to take into account principal distributions to beneficiaries of \$1,348,568. These principal and income cash outflows had a material effect on the ending principal value. Principal withdrawals also limited the future growth of Trust assets for the remainder interests.

22. The Objections also note testimony by Mr. Scalfani in another case, which the Objections interpret to mean that a trustee should earn between 8-12% per year if invested prudently without taking undue risk. Although the cited testimony does not mean what the Williams beneficiaries claim that it means, clearly the current Trustee achieved results in that range from 1983 to 2013.

23. The Objections also note a failure to diversify. I could find no evidence of lack of diversification, such as a concentration of investments in a single stock or investment sector.

24. The Objections also note a failure to properly file an accounting as a breach of Manufacturers and Traders Trust Company rules. I could find no standard in the Manufacturers and Traders Trust Company Policies & Procedures that required an accounting to be filed earlier. Further, New York law does not impose a requirement on trustee to account at regular intervals.

25. Again, based on my knowledge and experience, the Trustee invested the assets of the Trust consistent with Grantor intent, fiduciary standards, and industry practice.

Paul K. Napoli

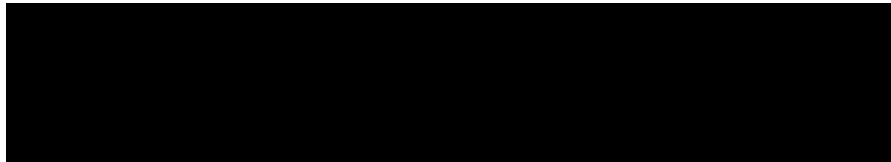
Paul Napoli, vice chairman and head of U.S. Trust's New York Region retired after 25 years with the firm. Napoli served on U.S. Trust's Management Committee since 1992.

With more than 40 years of experience in the wealth management business, Napoli has extensive knowledge of the needs and concerns of the affluent, as well as broader trends and issues affecting both the affluent and the wealth industry as a whole. His professional background is investment management. He began his career at U.S. Trust in 1983 as a vice president in charge of portfolio management. From 1985 – 1990 he successfully managed the firm's first equity mutual fund. His role expanded in 1991 to include integrating the fiduciary, planning and banking business with the investment management business. In 1992, he was named executive vice president in charge of the New York Region and joined the firm's Management Committee. He was an active participant in the firm's national expansion program through multiple acquisitions. In 2006, he was named a vice chairman of the firm. Before joining U.S. Trust, he was vice president and portfolio manager at The Bank of New York for 11 years.

Napoli is a member of the New York Society of Security Analysts and the Association for Investment Management and Research. He also serves on the Rockefeller University Trust and Estate Council; is a financial advisor to St. Peter's Prep and St. Benedict's Prep and a past member of the Advisory Board of the Salvation Army. He is also a director of Morgan Stanley Bank, N.A.

A Chartered Financial Analyst and Certified Trust and Financial Advisor, Napoli received his B.A. from Boston College in 1967 and his M.B.A. from Columbia University in 1969.

He has been quoted in *The New York Times*, *American Banker*, *Town & Country* and *Bank Investment Marketing* and has been a speaker on wealth management issues at Forbes magazine's President's Forum for Fast-Growing Companies and at *The Investment Company Institute's* annual meeting. He also was the U.S. Trust spokesperson for the firm's annual Affluent Survey and has appeared on CNBC and CNN.



PAUL K. NAPOLI

CURRICULUM VITAE

EMPLOYEMENT HISTORY

2011 – Present

Fiduciary Trust Company

- Director, Chair Audit Committee

Trustee

(2008 – Present)

- Grossman Family Foundation
- Family (former client at U.S. Trust)

Expert Witness

(2008 – Present)

- Trust and Investment matters

St. Peter's Prep. St. Benedict's Prep

(1995 – Present)

- Member, Finance Committee

2008 – 2011

Morgan Stanley Trust Co.

- Director, Chair Audit Committee, Member Compensated Committee

1983 – 2008

U.S. Trust Corp.

Vice Chairman, responsible for N.Y. Trust Co.; 11 offices, 500 employees, \$50B assets under management. Offer investment, fiduciary, planning and private banking services to top 2% of affluent U.S. families.

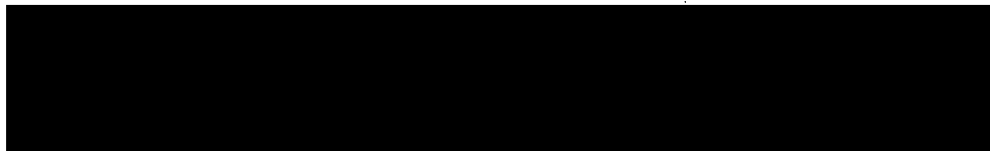
Responsibilities:

- N.Y. Trust Co.
- Member, U.S. Trust Management Committee
- Member, Investment Policy Committee
- Chair, Relationship Review Committee
- Member, Acquisition Review Committee
- Spend substantive time as "Senior" contact for most important clients and prospects
- Interaction with state and federal regulators

1972 – 1983

The Bank of New York

- Personal and institutional money management; managed endowment fund for alma mater of chairman
- Managed sales group that offered equity, fixed income, and economic research to other organizations
- Founder of options group



1971 – 1972 Westley Wolcott
Founded personal money management firm with insurance agent partner.

1969 – 1971 National Newark & Essex Bank of America
Personal Portfolio Management and Equity Research Experiences

PROFESSIONAL AFFILIATIONS

AIMR, N.Y. Society of Security Analysis, CFA Institute, Trust Management Association

EDUCATION

CFA® Charter, 1975
Columbia University, M.B.A, January 1969
Boston College, B.A., 1967

TEACHING EXPERIENCE

Fairleigh Dickinson Graduate School of Business, Adjunct Professor of Finance (1980-1983).

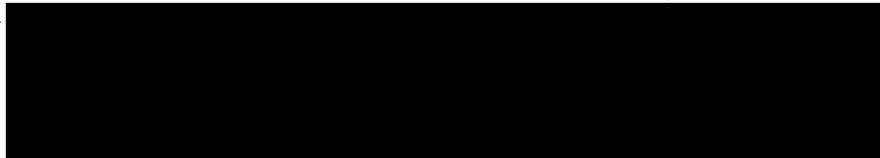
ACCOMPLISHMENTS

Thorough understanding of wealth management business, resulting in above average growth in client base with continued improvement in profitability. Low levels of client and employee turnover under my leadership.

Acquired firms in New Jersey and Pennsylvania and opened De Novo offices in Connecticut, Long Island, Washington D.C., and Virginia. Opened five satellite offices around pre-existing hubs.

Thorough understand of risk self assessment process.

First equity mutual fund manager for U.S. Trust; results for 5 years from 1985 – 1990 were in top 20% of all equity mutual funds.



Robert S. Bassett Trust #7 of 1974

DOCUMENTS REVIEWED

12/18/15 Daniel H. Williams III letter to Mr. Joseph A. Shifflett, Esq.

12/18/15 Daniel H. Williams III – Response & objections of the Williams beneficiaries to the December 10, 2015 “Affidavit of Legal Services – Interim Fee Request” filed by Roger B. Simon, Esq. as Guardian Ad Litem (“GAL”)

12/18/15 Daniel H. Williams III – Notice of motion for an evidentiary hearing and the other relief requested below in the “relief requested” section of this notice of motion

6/30/17 Daniel H. Williams – Amended objectives, demands for relief and counterclaims of the “Williams beneficiaries” (list). Who upon information and belief, allege, object to Manufacturers and Traders Trust Company accounting, demand for relief and counterclaim as follows, reserving their right to amend or supplement this pleading based on changes in the law, non parties, newly discovered evidence, testimony or subsequent proceedings as necessary or appropriate.

9/27/17 2211 Transcript Thomas J. Passek

10/24/17 2211 Transcript Sheila Blum

10/25/17 2211 Transcript Richard Scalfani

12/11/17 2211 Transcript Karen Cummins

12/13/17 2211 Transcript Todd Bemiller

12/15/17 2211 Transcript Steven Gattuso

1/31/18 2211 Transcript Todd Murphy

4/18/13 Wilmington Trust Fiduciary Compliance Policy Manual

9/9/01 Manufacturers and Traders Trust Company Policy Manual

1/31/74 Trust Agreement between Robert S. Bassett and Manufacturers and Traders Trust Company

Secure Financial Service analysis of performance for Bassett Trust #7 for the period 10/1983 – 10/2013

Manufacturers and Traders Trust Company Accounting for Robert S. Bassett Trust for period 9/7/1983 – 10/18/13

Investment Advisor minutes 1983 – 2001

Robert S. Bassett Trust performance for period ending 6/30/2015

Investment Committee recommended asset allocation dated 2/27/2018

St. Louis Fed annual returns on stocks, bonds and treasury bills

S & P dividend yield by year

12CFR Part 9 – Fiduciary activities of national banks

1/26/15 Annual Reg 9 review for Robert S. Bassett Trust

1/9/07 Annual administrative review

10/2/14 Investment Policy Statement for Robert S. Bassett Trust

Chart with list of income beneficiaries of Robert. S. Bassett Trust 1983-2017

2018 Wilmington Trust Investment Policy categories

5/31/17 Monthly statement of account for Robert S. Bassett Trust with investment objective, asset list, and transactions

Discussions with Karen Cummins, Trust Officer, and past and current Portfolio Managers Richard Scalfani, Steven Gattuso and Todd Bemiller

Data from Bureau of Labor Statistics and FactSet