

IN THE IOWA DISTRICT COURT FOR DUBUQUE COUNTY

**IN THE MATTER OF
THE RESIDUAL TRUST B UNDER
THE LAST WILL AND TESTAMENT OF
MARTHA WILLENBORG,
Deceased.**

No. TRPR 027914

**IN THE MATTER OF THE ESTATE OF
ELMER V. WILLENBORG,
Deceased.**

No. ESPR 044243

DECLARATORY RULING ON PROBATE FEES

On December 13, 2016 the court held a hearing on the October 18th Application for Fees filed by O'Connor & Thomas, P.C., former attorneys for trustee American Trust & Savings Bank. The Application drew an October 28th Objection¹ from the Willenborg Trust Beneficiaries: Mary Zirul, Joyce Willenborg, Ann Holst, Thomas Willenborg, and Carl Florian. The contested issues were set for hearing, with notice accorded to all interested parties. Acting under the auspices of the Iowa Business Court, the undersigned judge now proceeds upon the Application, pursuant to 1st District Chief Judge Kellyann Lekar's October 25th Order.

The following attorneys participated in the telephonic hearing.

- James E. Goodman, Jr., attorney for applicant O'Connor & Thomas, P.C.;
- Steven K. Daniels and Erich D. Priebe, attorneys for Objectors (beneficiaries of the Residual Trust B under the Last Will and Testament of Martha Willenborg (deceased)), and the Executor of the Estate of Elmer V. Willenborg (deceased);
and
- Gregory Lederer, attorney for trustee American Trust & Savings Bank.

¹ The Objection filed October 28th was reasserted after issuance of the hearing order, in the Objectors' Advice to Court filed December 8th.

The court has jurisdiction of the parties and of the subject matter to consider issues implicated by the O'Connor & Thomas Application. All interested parties have received notice of the issues and of the opportunity to be heard. *See* IOWA CODE §§ 633.10 (4), 633.11, 633.36, and 633A.4507 (2015). *Also see* IOWA R. PROB. P. 7.2 (3). The verified Application for \$14,054.20 in fees is duly submitted, upon the court's judicial notice of the probate file and the legal arguments of counsel.

The record reflects O'Connor & Thomas' itemized statement of legal services performed for trustee American Trust & Savings Bank, the billable time posted for various tasks, and the purpose of the work. In the context of the 2012 calendar-year billings which comprise the claim, the firm serviced legitimate needs of the Residual Trust B under the Last Will and Testament of Martha Willenborg—needs that were elevated that year due to the January 15, 2012 death of lifetime beneficiary Elmer Willenborg. Some administrative tasks were routine and in the ordinary course of annual reporting. However, it was incumbent upon the trustee and its counsel to work toward final administration once Elmer died.

Some legal services in 2012 were responsive to the trust beneficiaries' requests for information in the wake of Elmer's death—requests made through an attorney, and answered by the trustee's counsel. Some services embraced uncommon, real-estate issues involved with administrative winding-down as guided by the Agreement Concerning Real Estate (ACRE) which spelled out disposition of the Willenborg farm. Some services were reactive to the advent of the beneficiaries' litigation against the trustee—an unexpected and extraordinary development.

In particular, extraordinary legal services were involved in the trustee's filing of its August 16, 2012 Petition for Authority to Sell Real Estate pursuant to the ACRE. That spanned

the trust beneficiaries' September 6, 2012 Counterclaim, wherein American Trust was accused of violation of fiduciary duty, negligent misrepresentation, and fraudulent misrepresentation, and the beneficiaries demanded compensatory and punitive damages. O'Connor & Thomas assisted the trustee in timely response to the lawsuit. When the farm purchaser under the ACRE, Joan L. Recker, intervened that fall, O'Connor & Thomas reached out on the trustee's behalf to explore potential settlement with the intervenor's counsel.

By October 11, 2012 it had become apparent to O'Connor & Thomas that attorney John O'Connor would need to be a witness in the beneficiaries' litigation against American Trust. In the Order entered that day by Dubuque County District Judge Michael J. Shubatt, the court acknowledged the withdrawal of the law firm, and directed that the proceedings set for that day be rescheduled.

O'Connor & Thomas filed a timely Application for Fees December 13, 2012, without attaching an itemization; the absence of the billing detail was of an effort to protect its client's confidentiality over services provided in the throes of litigation. The Application sought \$13,850 in fees and an additional \$115.60 in advanced costs. The trust beneficiaries filed an Objection on January 23, 2013, demanding a refund of all prior fees paid to the law firm through allegations of breached duties and malpractice. O'Connor & Thomas responded one week later on January 30, 2013 with its Withdrawal of Application for Fees. In substance, the itemized claim now at bar represents that deferred claim.

Approximately one year after they brought suit against American Trust, the trust beneficiaries filed their September 20, 2013 Third-Party Claim against O'Connor & Thomas, to formally charge legal malpractice. The beneficiaries claimed breach of direct and indirect duties in conjunction with the law firm's services in drafting and implementing the ACRE, and

otherwise in furnishing American Trust with trust-administration support. While the litigated matters are on appeal, the current law of the case is that the beneficiaries' claims against American Trust and its former trust-administration counsel, O'Connor & Thomas, have been dismissed as meritless.

It is O'Connor & Thomas' responsibility to prove that its fees should be awarded. IOWA CT. R. 7.2 (2) and (3); *Estate of Bockwoldt*, 814 N.W.2d 215, 231-32 (Iowa 2012). The itemized billing factors attorney time at \$250 per hour (56.2/\$14,054.20) for services posted chiefly by attorney James E. Goodman, Jr., with some provided by attorney John C. O'Connor, and with a few attributed to an individual denominated MAG. For probate services provided by attorneys with experience in the field, O'Connor & Thomas' \$250 rate is reasonable and customary. Moreover, the units of time accounted are fair for the type of work involved.

It is, however, appropriate to adjust the hours eligible for compensation, to reflect only those accruing during the period of time that O'Connor & Thomas was involved in representing American Trust.² The 2012 fee claim was not really litigated at the time of its original filing, and no basis is shown to warrant compensation for its defense.

It is also necessary to calibrate the total hours to those actually itemized.³ Hours devoted to posted services January 1 through October 11, 2012 are 51.1—which, at the statement rate of \$250, yields the sum of \$12,775, a just and reasonable total fee. *See* IOWA CODE §§ 633A.4204 and 633A.4507.

² The 4.2 hours logged by the law firm after the court's Order allowing and acknowledging withdrawal from trustee representation feature 3.6 hours of time spent on preparation of the Application for Fees filed December 13, 2012. Iowa law permits allowance of extraordinary probate fees for attorneys' defense of a fee application in district court and on appeal. *Estate of Bockwoldt*, 814 N.W.2d at 218. A case-by-case analysis by the district court is required to determine when fee-litigation services should be recovered. *Id.* at 226.

³ Although the O'Connor & Thomas statement recites a balance of 56.2 hours, computed to a fee claim of \$14,054.20, only 55.3 hours are actually itemized. And, of those, 51.1 hours accrued through the October 11, 2012 date that the firm withdrew from representing American Trust.

In the final analysis, the propriety of an attorney-fee award in probate rests in the studied discretion of the district court, considering the compensation request within the context of the specific administration. IOWA CODE § 633.200; *see Estate of Brady*, 308 N.W.2d 68, 74 (Iowa 1981). Iowa probate law offers a rubric for the evaluation of the reasonableness of a fee, establishing that which would be necessary in ordinary circumstances vis-à-vis those implicated in extraordinary situations. *See* IOWA CODE §§ 633.197, *et seq.* While the application of this dichotomy is not mandatory for fee evaluation in trust administrations, it is instructive in factoring the context of American Trust’s legitimate need for legal services in 2012. *See id.*

The legal fees necessary for ordinary annual administration of the Willenborg Trust is historically quantified at \$265—the sum approved by the district court for routine 2010 and 2011 administration. The additional \$12,510 generated by O’Connor & Thomas in 2012 before its withdrawal, are fairly categorized as fees necessary for the extraordinary services attendant to unique circumstances—final implementation of the ACRE for disposition of the farm, as well as the litigation the beneficiaries initiated over it. Clearly, these expenses “in character and amount [are] beyond those usually required.” *Estate of Bockwoldt*, 814 N.W.2d at 224 (internal quotations and citation omitted).

An order should issue for approval of just and reasonable compensation for the trustee’s legal services provided January 1 through October 11, 2012.

THE COURT DIRECTS THE FOLLOWING.

1. The O’Connor & Thomas, P.C. Application for Fees is granted in part and denied in part.

- A. Fees of \$12,775 are approved for ordinary and extraordinary legal services provided to trustee American Trust and Savings Bank during the 2012 administrative year.
 - B. The balance of the claim for fees is denied for reasons articulated in the Declaratory Ruling.
2. The trustee shall pay the approved fees of \$12,775, as well as all court costs assessed for this fee-determination proceeding.

JUDGMENT IS ENTERED ACCORDINGLY, DECEMBER 30, 2016.

Directions for Service

Service of an electronic copy of this Order shall be made upon:

James E. Goodman, Jr., attorney for applicant O'Connor & Thomas, P.C.
David J. Dutton, Cheryl L. Weber, Steven K. Daniels, Erich Priebe, attorneys for
Willenborg Trust/Estate beneficiaries/interested persons/executor
Gregory M. Lederer, attorney for American Trust and Savings Bank
Megan R. Dimitt, attorney for American Trust and Savings Bank
Robert V.P. Waterman and Andrea D. Mason, attorneys for O'Connor & Thomas, P.C.
Douglas M. Henry, attorney for Joan L. Recker



State of Iowa Courts

Type: OTHER ORDER

Case Number **Case Title**
TRPR027914 TRUST MARTHA WILLENBORG TRUST B

So Ordered

A handwritten signature in blue ink, appearing to read "Annette J. Scieszinski". The signature is fluid and cursive, written over a horizontal line.

Annette J. Scieszinski, District Court Judge,
Eighth Judicial District of Iowa