

**In the Superior Court**  
**----- County, Indiana**  
**Cause No. \_\_\_\_\_**

JOHN DOE; and	)
JAYNE DOE;	)
	)
Plaintiffs,	)
	)
vs.	)
	)
BANK & TRUST COMPANY;	)
Individually and as Personal Representative	)
of the Estate of ----,	)
as Trustee of the Testamentary Trust of	)
---; and ---;	)
	)
Defendants.	)

**VERIFIED COMPLAINT TO CONTEST WILLS AND TRUSTS;**  
**FOR CONVERSION AND RICO; BREACH OF TRUST;**  
**BREACH OF FIDUCIARY DUTY;**  
**TORTIOUS INTERFERENCE WITH EXPECTANCY;**  
**FRAUD; and**  
**REQUEST FOR JURY TRIAL**

Come now the plaintiffs, and state the following as their verified first amended complaint in this matter.

**BACKGROUND FACTS**

1. On August 31, 1966 -- (now the “decedent”) signed a Will admitted to probate by the Court attached as Exhibit 1. The decedent also signed various trust agreements attached as Exhibit 2.
  
2. The decedent died on ---.

## WILL AND TRUST CONTESTS

21. Pursuant to Indiana Code Section 29-1-7-17, the plaintiffs contest the probate of the decedent's Will dated February 9, 2001, and objects to and contests the probate of any other Will of the decedent (dated July 9, 1992, January 13, 1994, September 11, 1995, January 25, 1996, May 11, 1998, October 15, 1999, and July 21, 2000).

22. Other than the 1966 Trust which is not being contested, the plaintiffs also contest and seek to set aside all trusts and/or amendments purportedly signed on July 9, 1992, December 22, 1992, December 30, 1997, May 11, 1998, June 1, 1999, October 15, 1999, July 21, 2000, and February 9, 2001.

23. Concerning all of her wills and trusts (except the one she signed on August 31, 1966), the plaintiffs allege:

- a. the unsoundness of mind of the decedent;
- b. the undue execution of the documents;
- c. that the wills and trusts were executed under duress or obtained by fraud; and/or
- d. any other valid objection to the document's validity or the probate of the will.

WHEREFORE, the plaintiffs request that the Jury revoke the probate of the February 9, 2001 Will, set it aside, and for such further relief deemed proper.

WHEREFORE ALSO, the plaintiffs request that the Jury declare that the decedent did not have sufficient soundness of mind at any time since July 9, 1992 to sign any will or trust. All of the purported Wills and Trusts can be set aside in a single trial, especially where they involved a concerted plan to benefit the Ryan

family over the Berghoffs. Such relief is proper under Trial Rule 57 and the Uniform Declaratory Judgments Act, Indiana Code Section 34-14-1-1, *et seq.* Indeed, Indiana Code Section 34-14-1-2 specifically permits jurisdiction over any and all “will[s] ... and obtain a declaration of rights, status, or other legal relations thereunder.”

**CONVERSION AND  
RACKETEERING INFLUENCED AND CORRUPT ORGANIZATIONS ACT**

24. During her lifetime ----- had a confidential and fiduciary relationship with the decedent.

25. These defendants controlled the decedent’s property, and used the United States Mail to further their unlawful actions.

26. These defendants received property from the decedent under the guise of “gifts” or “fees” or “expenses”, and improperly caused others to receive property at the expense of the decedent and at the expense of the plaintiffs.

27. In violation of Indiana Code Sections 35-43-4-1, 35-43-4-2, and 35-43-4-3, 18 U.S.C. Sections 1961, *et seq.* (and 18 U.S.C. Section 1341), and of such other legal and equitable grounds for relief as may be appropriate, these defendants knowingly and intentionally exerted unauthorized control over the decedent’s property, with the intent to permanently deprive her of its value and use, and caused her and the plaintiffs to suffer pecuniary loss:

- a. Without ---- real consent;
- b. By obtaining her purported consent through undue influence;
- c. By creating and confirming false impressions upon June;
- d. By failing to correct a false impression that the defendants knew was influencing June, while standing in a relationship of special trust;
- e. By promising performance that the defendants knew would not be performed; and

f. Such other reasons as discovery may disclose.

28. Pursuant to Indiana Code Section 34-24-3-1 and 18 U.S.C. Section 1964(c), these defendants are liable for actual damages, plus an amount three (3) times the actual damages, the costs of this action, attorney fees, travel expenses, reasonable amounts to cover the time expended on behalf of the plaintiffs and decedent, all direct and indirect expenses, and all other reasonable costs of collection.

WHEREFORE the plaintiffs request that the Jury award damages from these defendants, jointly and severally, as deemed proper.

#### **BREACH OF TRUST**

29. The defendant Banks breached their duties as Trustee of all of the trusts in which the decedent and the plaintiffs had an interest, negligently performed their duties, failed to follow trust terms, failed to act in the best interest of the beneficiaries, acted under a conflict of interest in favor of the ---- family, and otherwise breached their fiduciary obligations.

30. Concerning the decedent's 1966 trust, on December 31, 1999 it had a fair market value of approximately \$9,437,000.00. On September 30, 2002 it had a fair market value of approximately \$5,095,000.00. Since 1966 the banks have never accounted for this trust.

31. Concerning the --- testamentary trust, on December 30, 2000 it had a fair market value of approximately \$2,350,000.00. On June 30, 2002 it had a fair market value of approximately \$1,738,000.00. Since 1961 the banks have never accounted for this trust.

32. Concerning the 1989 Irrevocable Trust, on December 31, 2000 it had a fair market value of approximately \$5,035,000.00. On June 30, 2002 it had a fair market value of approximately \$3,536,000.00. Since 1989 the banks have never accounted for this trust.

33. Concerning the decedent's revocable trust dated 1992, on December 31, 2001 it had a fair market value of approximately \$550,000.00. On September 30, 2002 it had a fair market value of approximately \$147,000.00. Since 1992 the banks have never accounted for this trust.

34. In all, the trusts in which the decedent had an interest dropped in value approximately \$6,856,000.00 over the course of the two years before her death. The banks caused the losses in the accounts in part because they did not properly diversify the portfolio and made improper investments. The banks also collected improper fees.

35. The banks violated their fiduciary duty by not keeping the beneficiaries informed of the account values and distributions. For example, since 1995 the banks did not send any financial statements to ---- concerning any of her trusts.

36. The decedent had a unconditional right to the income from the 1966 trust; yet the banks refused to pay for items that she wanted to purchase. The Banks also took direction from ---.

37. The Banks violated multiple provisions of the Trust Code: *Indiana Code Section 30-4-3-6(b)(1)* (trustee has a duty to administer the Trust solely in the interests of the beneficiaries); *Indiana Code Section 30-4-3-6(b)(3)* (trustee must

maintain control over Trust property); *Indiana Code Section 30-4-3-6(b)(5)* (a trustee shall make the Trust property productive for both the income and remainder beneficiary); *Indiana Code Section 30-4-3-6(b)(9)* (trustee must take whatever action is necessary to realize on claims constituting part of the Trust property); *Indiana Code Section 30-4-5-1* (a Trust shall be administered with due regard to the respective interests of income beneficiaries and remainderman). *Indiana Code Section 30-4-3-6(a)*; *Indiana Code Section 30-4-3-6(b)(6)* (a trustee must keep the Trust property separate from the trustee's individual property and from property subject to another Trust).

WHEREFORE the plaintiffs request that the Jury award damages from these defendants, jointly and severally, as deemed proper.

#### **BREACH OF FIDUCIARY DUTY**

38. The Probate Court appointed ---- to serve as personal representative of the decedent's estate.

39. The Bank has breached its fiduciary duty to the estate by not pursuing actions against ---- for conversion, breach of trust, malpractice, breach of fiduciary duty, and/or fraud.

WHEREFORE the plaintiffs request that the Jury award damages from these defendants, jointly and severally, as deemed proper.

#### **TORTIOUS INTERFERENCE WITH EXPECTANCY**

43. The defendants tortiously interfered with the plaintiffs receiving their proper inheritance.

44. These defendants controlled and received the decedent's property. If the decedent had the capacity to sign a valid Will or Trust, she would have designated the plaintiffs to inherit her wealth.

WHEREFORE the plaintiffs request that the Jury award damages from these defendants, jointly and severally, as deemed proper.

**FRAUD**

45. .... [List of specific untruthful statements]

WHEREFORE the plaintiffs request that the Jury award damages from these defendants, jointly and severally, as deemed proper, including punitive damages.

**REQUEST FOR JURY TRIAL**

50. The plaintiffs request trial by Jury on any and all issues in this case.

I affirm under the penalty of perjury that foregoing statements are true and correct, this \_\_\_\_\_.

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For the Plaintiffs