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CASEBRIEFS

HITTING REWIND: THE SUPREME COURT OF PENNSYLVANIA IN
TRUST UNDER AGREEMENT OF TAYLOR SIGNALS A MOVE AWAY
FROM MODERN DEVELOPMENTS OF TRUST LAW
BY REQUIRING MORE STRINGENT STANDARDS
FOR CORPORATE TRUSTEE REMOVAL

RYAN J. AHRENS*

“The past is never dead. It’s not even past.”¹

I. THE WORLD CHANGES, BUT A TRUST DOES NOT: STATIC TRUSTS AND
THE EVOLUTION OF BANKING INDUSTRY PRESENT PROBLEMS FOR
DISSATISFIED TRUST BENEFICIARIES

History has shown that the human ability to predict is flawed—or at best questionable.² At times, we have spectacularly showcased our inability to know what the future has in store; we have predicted that the Beatles would never be popular, that online shopping would fail to appeal to the average consumer, and, in 1929, that the American stock market would

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1. WILLIAM FAULKNER, *REQUIEM FOR A NUN* 80 (1975) (explaining, through character Gavin Stevens, that though someone stated that Temple Drake is dead, effects of those gone are still felt).

2. See, e.g., Caroline Beaton, *Humans Are Bad at Predicting Futures That Don’t Benefit Them*, *THE ATLANTIC* (Nov. 2, 2017), <https://www.theatlantic.com/science/archive/2017/11/humans-are-bad-at-predicting-futures-that-dont-benefit-them/544709/> [<https://perma.cc/9W2P-LFNJ>] (noting that optimistic people often wrongly believe that “bad things are less likely to happen to them” and that this “hampers their decision-making”); Steve Forbes, *Romney Will Win Decisively*, *FORBES* (Nov. 6, 2012, 2:45 PM), <https://www.forbes.com/sites/steveforbes/2012/11/06/steve-forbes-romney-will-win-decisively/#67d83c472398> [<https://perma.cc/7HAY-VEVJ>] (predicting that Mitt Romney will win 2012 presidential election); Frances Romero, *Top 10 Failed Predictions*, *TIME* (Oct. 21, 2011), http://content.time.com/time/specials/packages/article/0,28804,2097462_2097456_2097489,00.html [<https://perma.cc/X336-6GKL>] (listing top ten failed predictions, including various end of world predictions, that Titanic cannot sink, and that earth is flat); Robert J. Szczerba, *15 Worst Tech Predictions of All Time*, *FORBES* (Jan. 5, 2015, 7:55 PM), <https://www.forbes.com/sites/robertszczerba/2015/01/05/15-worst-tech-predictions-of-all-time/#51e667d11299> [<https://perma.cc/FRP4-ZVU7>] (listing fifteen worst technology predictions, including one prediction that stated telephone would not become popular).

not crash.³ It takes a skilled lawyer, then, to draft a trust that can simultaneously reflect and retain the wishes of the trust's creator while having enough flexibility to adapt to an ever-changing and *crucially unpredictable* world.⁴ Dramatic ownership and organizational changes over the last century in banks and other financial institutions, for example, have challenged the old trust precept that even though the world has changed, a trust should not.⁵ The stark dissonance between an unchanging trust document and an ever-changing banking industry has been subject to criticism, especially when the beneficiaries of a trust are otherwise unable to amend an antiquated trust or remove unsatisfactory bank, or corporate trustees.⁶

3. See Lucy Kinder, *7 of the Worst Predictions Ever*, BUSINESS INSIDER (Sept. 9, 2011, 4:00 PM), <http://www.businessinsider.com/7-of-the-worst-predictions-ever-2013-9> [<https://perma.cc/4JE5-LY9B>] (listing seven predictions that famously did not come true).

4. See Ronald Chester, *Modification and Termination of Trusts in the 21st Century: The Uniform Trust Code Leads a Quiet Revolution*, 35 REAL PROP. PROB. & TR. J. 697, 701 (2001) ("The most difficult reality that the drafter of a trust faces is that the circumstances anticipated at drafting inevitably change over time."); see also Richard C. Ausness, *Sherlock Holmes and the Problem of the Dead Hand: The Modification and Termination of "Irrevocable" Trusts*, 28 QUINNIPIAC PROB. L.J. 237, 298 (2015) (explaining that multi-generational trusts are difficult to administer because of lack of flexibility). One way to avoid this problem is to "[empower] the trustee or a trust protector to modify the trust in response to changing circumstances." See *id.* (explaining potential fix to inflexible trusts). For a general definition of a trust and the process of its formation, see *infra* notes 25–27 and accompanying text.

5. See Ausness, *supra* note 4, at 243–44 (describing American doctrine in place since late 1800s which states that trusts can only be terminated when all beneficiaries consent and material purpose of trust is either fulfilled or not violated); Ronald Chester & Sarah R. Ziomek, *Removal of Corporate Trustees Under the Uniform Trust Code and Other Current Law: Does a Contractual Lens Help Clarify the Rights of Beneficiaries?*, 67 MO. L. REV. 241, 246 (2002) ("Dissolution, merger, and the selling of trust accounts, with or without such corporate changes, certainly indicate that bank trustees no longer regard their 'contracts' with the average settlor as sacrosanct."); Standish H. Smith, *Reforming the Corporate Administration of Personal Trusts - The Problem and a Plan*, 14 QUINNIPIAC PROB. L.J. 563, 566 (2000) (noting that in 1940 and earlier, wealthy trust creators would use friends or "the trust department of a local commercial bank" to administer trust). For the definition and a discussion of the *Clafin* doctrine, see *infra* notes 41–45 and accompanying text.

6. See Smith, *supra* note 5, at 569 (noting that beneficiaries of older trusts are often locked in with trust's corporate trustee); *id.* at 570 (describing survey results that found that banks were unwilling to offer to beneficiaries "basic investing fundamentals" and "information on their rights, the responsibilities of a fiduciary and explanations underlying their administrative actions."); *id.* at 572 ("In practice, it is clear that the broad powers granted to trustees can be abused. Even the beneficiary who serves as his/her own trustee may not always administer in the manner intended by the settlor in which case there is a conflict of interest between beneficiary and settlor!"). Even state and federal law do not fully solve this problem:

In trusts, where the right to change the corporate fiduciary without having to prove cause is absent (which is typically the case for older trusts), the corporate trustee is held in-check principally by a body of state and federal law which is often non-specific and for practical purposes, inaccessible unless the beneficiary is willing to risk his/her trust assets in the hope of relief.

Discussions surrounding this problem are forced to grapple with how to balance the oft-disparate interests between the person who created a trust (the settlor) and those receiving the benefits of that trust (the beneficiaries).⁷ These discussions attempt to answer a difficult question: at what point has the world changed enough where the wishes of the settlor—as reflected in the trust document—should be modifiable by the trust’s beneficiaries?⁸ Indeed, for much of American history, trust beneficiaries had limited powers to make any changes to a trust.⁹ In recent years, however, reforms have increased beneficiary control to modify and amend a trust document.¹⁰

In July 2017, the Supreme Court of Pennsylvania in *Trust Under Agreement of Taylor*¹¹ denied three beneficiaries the ability to remove a corporate trustee by means of modifying their trust.¹² *Taylor* is notable because it falls at the intersection of the modern trend to afford more power to

Id. at 569 (explaining problem of difficult-to-oust corporate trustees and how current legal system may not solve it). For a definition and discussion of corporate trustees, see *infra* notes 33–38 and accompanying text.

7. See Bradley S. Fogel, *Terminating or Modifying Irrevocable Trusts by Consent of the Beneficiaries - A Proposal to Respect the Primacy of the Settlor's Intent*, 50 REAL PROP. TR. & EST. L.J. 337, 341 (2016) (noting “a common conflict of interest in trusts and estates” is between two competing desires: settlor’s desire to put property in trust such that it can be controlled for a long period of time versus trust beneficiaries’ desire to use trust property in way they want).

8. See Ausness, *supra* note 4, at 294–95 (“If the interests of the deceased settlor and the living trust beneficiaries sometimes diverge, then what is the proper balance to strike between them?”). See generally *id.* at 257–58 (describing trust modification theory of equitable deviation, which allows courts to make changes to trusts that have been affected by extreme circumstances that settlor did not anticipate). Equitable deviation is applied in a variety of scenarios, including, “removing a trustee, modifying a trust investment portfolio, or extending the duration of the trust.” See *id.* at 258 (explaining that theory of equitable deviation has expanded beyond “overrid[ing] restrictions on the sale of trust property”).

9. See Chester, *supra* note 4, at 719 (explaining that courts’ strict rules affording beneficiaries little power to terminate or modify trust was direct result of courts’ acceptance of trusts as legal devices meant to protect property); Chester & Ziomek, *supra* note 5, at 242–43 (“As *Claflin* indicates, American trust law traditionally has protected settlor intent more zealously than the interests of the beneficiaries.”). Indeed, Chester continues: “What good were the restraints imposed by settlors if beneficiaries, according to their whim, could alter the trust containing the restraints or eliminate them altogether by terminating the trust?” Chester, *supra* note 4, at 719 (noting courts’ problems with broad beneficiary power to modify or terminate trust). For a discussion of the treatment of trust modification and termination in American and Pennsylvanian law, see *infra* notes 39–60 and accompanying text.

10. See Ausness, *supra* note 4, at 263 (explaining that provisions in Uniform Trust Code and Third Restatement of Trusts have “expanded the power of courts to modify or terminate irrevocable trusts” and “chipped away at the traditional scope of dead hand control over trust property, and significantly expanded the rights of beneficiaries”). For a discussion of the Uniform Trust Code and its effect on liberalizing American trust law, see *infra* notes 50–53 and accompanying text.

11. 164 A.3d 1147 (Pa. 2017).

12. See *Taylor*, 164 A.3d at 1149 (“[W]e conclude that the UTA does not permit the removal and replacement of a trustee without Orphans’ Court approval in

beneficiaries to make changes to a trust, including changing its trustee, and the problem of intimidating corporate trustees that are too difficult to oust.¹³ Specifically, the *Taylor* court denied the beneficiaries the ability to modify their trust to include a provision that would grant them the future power to remove their corporate trustee.¹⁴ In its reasoning, the court stated that trust modification and trustee removal are distinct issues governed by separate provisions of Pennsylvania trust law.¹⁵ By placing trustee removal beyond the scope of the general power to modify a trust, the Supreme Court of Pennsylvania signaled its apprehension to grant beneficiaries the plenary power to use trust modification to effectuate any goal (in this case, trustee removal).¹⁶ However, concerns remain regarding beneficiaries' limited powers to remove a corporate trustee whose performance is unsatisfactory.¹⁷

This Casebrief argues that *Taylor*: (1) limits trustee removal to Section 7766 of Pennsylvania's trust law, which includes its own internal limitations on corporate trustee removal; (2) calls attention to growing criticism that the power dynamic between corporate trustees and beneficiaries is inequitable; and (3) requires Pennsylvania practitioners to examine other means, such as a 2013 Pennsylvania Superior Court case, for dissatisfied beneficiaries to free themselves of their corporate trustees.¹⁸ Part II in-

accordance with section 7766. Accordingly, we reverse the Superior Court's decision.”).

13. *See id.* at 1154 (describing beneficiaries' arguments that they should be able to replace corporate trustee via trust modification because banking industry has changed dramatically since date of trust's creation); Ausness, *supra* note 4, at 271 (stating that Restatement (Third) of Trusts allows for termination or modification of irrevocable trusts even if material purpose is violated, “if a court determines that the reasons for the proposed modification outweigh the material purpose”); Smith, *supra* note 5, at 571 (“[A] corporate trustee is not only responsible to its stockholders and must maximize profits, but may not even have been known to the settlor due to merger, etc.”).

14. *See Taylor*, 164 A.3d at 1155 (holding lower court was in error and modification/termination Section 7740.1 of Pennsylvania trust law cannot be used to add portability provision that would enable trust beneficiaries, at some future point, to remove corporate trustee).

15. *See id.* at 1156–57 (“[C]urrently the corporate trustee of the Taylor Trust may be removed and replaced, if at all, only pursuant to section 7766, the statutory default provision for removal and replacement.”).

16. *See id.* at 1157 (holding that trustee removal cannot be effectuated via trust modification provision by stating that allowing otherwise would “nullify, exclude or cancel” more stringent requirements found in trustee removal section).

17. *See Smith*, *supra* note 5, at 569 (“Consider a service which the consumer must accept and pay for even if unsatisfactory and for which the fee is typically set by the vendor rather than by market forces.”).

18. *See* 20 PA. STAT. AND CONS. STAT. ANN. § 7766(b) (West 2010) (listing requirements that petition to remove trustee must meet for court to be able to find that trustee removal is appropriate); *Taylor*, 164 A.3d at 1161 (holding that section 7766 is exclusive provision for trustee removal in Pennsylvania); Smith, *supra* note 5, at 565–66 (explaining how beneficiaries “often complain” about corporate trustees, including “high rate of turnover of trust officers and their lack of experience and expertise”); *id.* at 569 (noting how corporate beneficiaries set fees without

cludes a brief explanation of the law of trusts and an overview of another Pennsylvania trust case that addressed no-fault corporate trustee removal.¹⁹ Part III provides the facts and procedure of *Taylor* before it reached the Supreme Court of Pennsylvania.²⁰ Part IV describes the Supreme Court of Pennsylvania's reasoning in *Taylor*.²¹ Part V discusses how the *Taylor* decision has limited trustee removal to Section 7766 of the UTA—which includes its own limitations for corporate trustee removal—and that legal scholars are concerned about the unequal footing between corporate trustees and trust beneficiaries.²² Part VI discusses the impact *Taylor* could have on Pennsylvania practitioners and introduces another Pennsylvania case that may be more useful to trust beneficiaries who wish to rid themselves of their corporate trustee.²³

II. SOME THINGS NEVER CHANGE: LEGAL FOUNDATIONS OF TRUST LAW
HAVE REMAINED THE SAME WHILE U.S. AND PENNSYLVANIA
TREATMENT OF TRUST MODIFICATION HAVE EBBED
AND FLOWED

An in-depth discussion of trusts requires an understanding of a number of related terms and legal concepts whose meanings may not be intuitive to someone unfamiliar with this area of the law.²⁴ In its most basic form, a trust is a separation of title of property between three legally distinct parties: the settlor, the trustee, and the beneficiary.²⁵ The formation

beneficiary consent and that challenging corporate trustee's status as trustee could deplete money from trust); *id.* at 575 ("In short, the corporate trustee can and sometimes does exploit its monopolistic position in order to restrain its clients. Consequently, beneficiaries frustrated by incompetent investment management, rising fee rates, and an ever changing stream of often less than expert account administrators, typically choose to endure rather than confront."); Jeffrey Marshall, *Trust Beneficiaries Use "No-Fault" law to Replace Trustee*, MARSHALL, PARKER & WEBER, LLC (June 7, 2013), <http://www.paelderlaw.com/trust-beneficiaries-use-no-fault-law-to-replace-trustee/> [https://perma.cc/Z6G8-TDNY] (explaining that "it is getting easier for beneficiaries to change the trustee" as result of *McKinney* decision). For a discussion of *McKinney*, see *infra* notes 61–70, 144–155 and accompanying text.

19. For a further discussion of the legal structure of a trust, corporate trustees, and trust legislation in Pennsylvania, see *infra* notes 24–70 and accompanying text.

20. For a further discussion of the facts and procedure surrounding *Taylor*, see *infra* notes 71–91 and accompanying text.

21. For a full narrative analysis of *Taylor*, see *infra* notes 92–105 and accompanying text.

22. For a full critical analysis of *Taylor*, see *infra* notes 106–40 and accompanying text.

23. For a further discussion on the impact *Taylor* could have on Pennsylvania practitioners and what they can do to work around it, see *infra* notes 141–55 and accompanying text.

24. For a discussion of trusts, including related terms and their definitions, see *infra* notes 25–27 and accompanying text.

25. See *Trust*, BLACK'S LAW DICTIONARY (10th ed. 2014) (defining trust by describing relationship between three distinct legal parties).

of a trust follows a general pattern: a person (the settlor) requests certain property that he or she owns to be held by another (the trustee) in order to benefit a third party (the beneficiary).²⁶ Trustees, while holding legal title to the property, are bound by the terms of the trust document and must, according to the trust's terms, distribute the trust property to the beneficiary, who is deemed to hold equitable title.²⁷

A. *Old Relics: Corporate Trustees Stand the Test of Time Because of Strict Requirements to Amend Irrevocable Trusts*

Trusts are popular legal devices because they allow control over assets even after the death of the settlor.²⁸ In addition, trusts are ubiquitous because they are extremely versatile, appearing in many different forms that are primarily distinguished by their purpose; examples of specific trusts range from annuity trusts, to constructive trusts, to testamentary trusts.²⁹ While there are many kinds of specific types of trusts, at a broader level most trusts can fit into two major categories: irrevocable or revocable.³⁰ Settlers wishing to instill permanence in their trust would make the trust irrevocable, meaning that, for the most part, after the

26. *See id.* (explaining formation of trust as related to three distinct legal parties). "Settlor" is defined as, "[s]omeone who makes a settlement of property; esp., one who sets up a trust." *Settlor*, BLACK'S LAW DICTIONARY (10th ed. 2014) (defining settlor). "Trustee" is defined as, "[s]omeone who stands in a fiduciary or confidential relation to another; esp., one who, having legal title to property, holds it in trust for the benefit of another and owes a fiduciary duty to that beneficiary." *Trustee*, BLACK'S LAW DICTIONARY (10th ed. 2014) (defining trustee). "Beneficiary" is defined as, "[s]omeone who is designated to receive . . . as a result of a legal arrangement or instrument." *Beneficiary*, BLACK'S LAW DICTIONARY (10th ed. 2014) (defining beneficiary).

27. *See Trust*, BLACK'S LAW DICTIONARY (10th ed. 2014) (explaining that settlor vests in trustee legal title to property while beneficiary has right, "solely in equity," to enjoy that property, and that trustee has fiduciary duties, outlined specifically by settlor, to deal with property for beneficiary's benefit).

28. *See Chester*, *supra* note 4, at 698–99 (explaining trusts and their ability to aid those intent on "projecting vast wealth past their own deaths").

29. *See Trust*, BLACK'S LAW DICTIONARY (10th ed. 2014) (providing extensive list of different types of trusts). An annuity trust is defined as, "[a] trust from which the trustee must pay a sum certain annually to one or more beneficiaries for their respective lives or for a term of years . . ." *See id.* (defining annuity trust as subset of "trust" definition). A constructive trust is defined as, "[a]n equitable remedy by which a court recognizes that a claimant has a better right to certain property than the person who has legal title to it." *See id.* (defining constructive trust as subset of "trust" definition). A testamentary trust is defined as, "[a] trust that is created by a will and takes effect when the settlor (testator) dies." *See id.* (defining testamentary trust as subset of "trust" definition).

30. *See Trust*, BLACK'S LAW DICTIONARY (10th ed. 2014) (explaining that most states' default rules make trust irrevocable if trust document is silent as to that matter); *see also* Scott M. McCullough, *Uncovering the Potential of an Irrevocable Trust*, 28 UTAH B.J. 36, 36 (2015) (noting that "with few exceptions and creating tools, [irrevocable trusts] cannot be changed or altered once established").

trust's creation it cannot be terminated—even by the settlor.³¹ A revocable trust, by contrast, is much more amendable.³²

Trustees, either individuals or companies, are crucial to the administration of a trust.³³ If a trust has a corporate trustee, then a business (likely a bank or trust company) has filled the role of trustee in lieu of an individual person.³⁴ Moreover, even at the beginning of the rise of the trust's popularity as a device for wealth planning, settlors used corporate trustees.³⁵ This longstanding use of banks as corporate trustees has effectuated interconnectedness between the banking industry and the law of trusts, and this relationship continues to embroil the industry in criticism.³⁶ For example, older trusts deal with the effects of having a corporate trustee that, through years of mergers and reorganizations, no longer resembles the corporate trustee as designated by the trust's settlor.³⁷ If a beneficiary is unhappy with the trust's corporate trustee, he or she may try

31. See *Trust*, BLACK'S LAW DICTIONARY (10th ed. 2014) (defining irrevocable trust as subset of "trust" definition and explaining that irrevocable trust, upon creation, cannot be terminated by its settlor).

32. See *id.* (defining revocable trust as "trust in which the settlor reserves the right to terminate the trust and recover the trust property and any undistributed income").

33. See Smith, *supra* note 5, at 571 (noting differences between corporate trustees and individual trustees). In theory, a trustee is supposed to represent the wishes of the settlor because the settlor has relinquished ownership of the property. See *id.* at 572 ("In theory, a trustee of a personal trust represents the interests of the settlor and, derivatively, those of the beneficiaries. In theory, the trustee stands in the shoes of the settlor.").

34. See *Trustee*, BLACK'S LAW DICTIONARY (10th ed. 2014) (defining "corporate trustee" as part of "trustee" definition).

35. See Smith, *supra* note 5, at 564 (describing banking industry's long-standing involvement in "evolution of the Uniform Trust Act"). In fact, the banking industry first suggested that there should be model and uniform rules of trust administration. See *id.* (quoting *Uniform Trusts Act*, NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS (Sept. 1937)) (noting banking industry's interest in promulgating more favorable rules to ease their trust administration duties). For a discussion of the interconnectedness of the banking industry and the law of trusts, see *infra* notes 36–37, 130–34 and accompanying text.

36. See, e.g., Smith, *supra* note 5, at 567 ("The bank trustee can act with more impunity than his predecessor because the typical trust department has numerically more clients than before (the corpus for each representing a diminished percentage of total assets handled), and for the most part, his clients do not know one another."). Corporate trustees can also be questioned about where their loyalty lies: to the settlor (by following the terms of the trust), or to their shareholders (by making a profit from the trust)? See *id.* at 571 (explaining tension between duties owed to shareholders and duties owed to settlor and beneficiary). In addition, corporate trustees control what they will be paid by the trust as reimbursement to administration, often while helpless beneficiaries can do nothing more than watch because the trust lacks a portability clause. See *id.* at 572 (explaining unilateral control over fee arrangements by corporate trustees while trust beneficiaries often remain helpless to "[seek] more cost effective administration").

37. See *id.* at 566–67 (explaining how corporate trustees of older trusts undergo mergers and acquisitions that may render corporate trustee unrecognizable and of character different than intended by settlor).

to modify the trust to add a “portability” provision—a trust provision that gives a person the power to change the trustee.³⁸

Even irrevocable trusts can be modified or terminated.³⁹ As the modifier may suggest, however, modifying or terminating irrevocable trusts is still considered a difficult task.⁴⁰ Notably, treatment of irrevocable trust termination or modification has ebbed and flowed throughout American history: old common law based on English treatment of trusts made the process quite easy, then a famous Massachusetts case limited this broad power, and then today, with the promulgation of model acts and trust law reform, this termination and modification power has again expanded.⁴¹ The seminal Massachusetts case, *Claflin v. Claflin*,⁴² only allowed trust termination if both prongs of a test were satisfied: (1) all beneficiaries consent to the termination, and (2) the “material purpose” of the trust is “fulfilled or is impossible.”⁴³ Courts have adapted the *Claflin* test from its

38. See Chester & Ziomek, *supra* note 5, at 242 (defining “portability” as power to change trustee and explaining how courts have viewed this power as a type of trust modification); *id.* at 275 (placing portability at end of spectrum representing strong beneficiary power over removal of trustee).

39. See Fogel, *supra* note 7, at 338 (“Beneficiaries frequently seek to terminate or modify purportedly irrevocable trusts that, they feel, do not serve their needs.”). Trusts can be terminated for a variety of reasons, including the trust document giving the authority for it to be terminated, to correct a mistake, or because the value of the trust assets is too low. See *id.* at 339 (listing common reasons as to how or why trusts are terminated).

40. See *id.* at 340 (“Indeed, in most states it is exceedingly difficult to terminate, or modify, an irrevocable trust.”).

41. See *id.* (explaining how early U.S. trust cases followed law of England, which vested in trust beneficiary broad power to terminate trust); *id.* (explaining how Massachusetts case, *Claflin*, introduced new test on trust termination modification with more stringent requirements); see also *Prefatory Note*, UNIFORM TRUST CODE (2000), http://www.uniformlaws.org/shared/docs/trust_code/utc_final_rev2010.pdf [<https://perma.cc/78MC-TVY7>] (explaining how Uniform Trust Code, written in 2000, includes number of “innovative provisions” such as “rules on trust modification and termination that will enhance flexibility”). English law can be viewed as more strongly considering the interests of the trust beneficiaries rather than the interests of the settlor. See Chester & Ziomek, *supra* note 5, at 253 (explaining difference of approach in English law, which has liberal trust modification rules that includes consideration of beneficiaries’ interests in trust modification analysis). For a discussion of the Uniform Trust Code and its connection to Pennsylvania’s trust law, see *infra* notes 50–57 and accompanying text.

42. 20 N.E. 454 (Mass. 1889).

43. See Fogel, *supra* note 7, at 340 (stating how *Claflin* spurred development of new common law test for modification or termination of trust). Notably, *Claflin* never used the phrase “material purpose,” yet that language made its way into this new common law test. See *id.* at 346 (noting language of common law test differs from language Massachusetts Supreme Judicial Court used in *Claflin* decision). Indeed, *Claflin*’s power is undeniable; a prominent reason that the American legal system is so hesitant to liberalize trust modification and agreement stems back to *Claflin*’s rule. See Chester & Ziomek, *supra* note 5, at 242 (“The principal reason for this reluctance lies in the tenet announced in *Claflin* preventing trust termination (or, by implication, modification) where such changes contravene a material purpose of the settlor.”). In *Claflin*, the settlor created a testamentary trust for his sons (the beneficiaries). See *Claflin*, 20 N.E. at 455 (explaining origin of trust).

original applicability to trust termination to also encompass trustee modification.⁴⁴ The kinds of powers beneficiaries should have regarding trust modification, and whether *Clafin* remains the proper test courts should use, remains a subject of debate today.⁴⁵

B. *Letting Go of the Past: Pennsylvania Updates its Strict Trust Modification Statute Through the Enactment of the Uniform Trust Act*

Before substantial reform in the early twenty-first century, Pennsylvania had a longstanding practice of strictly enforcing settlor intent (as expressed in the trust document) in petitions to modify or terminate a trust.⁴⁶ For example, if a trust's settlor was dead and all beneficiaries wanted to terminate or amend a spendthrift trust, it was impermissible

The trust document made clear that the trustee should pay one of the beneficiaries (Adelbert) in a specific manner: \$10,000 at the age of twenty-one and \$10,000 at the age of twenty-five. *See id.* (explaining instructions in trust document on how specific beneficiary was to be paid). Before he turned twenty-five, the beneficiary whose payment had these strings attached petitioned the court to be paid the remaining \$10,000, but the court refused. *See id.* at 455–56 (refusing to grant beneficiary's request for premature release of trust funds). The court noted that, “[t]he existing situation is one which the testator manifestly had in mind, and made provision for. The strict execution of the trust has not become impossible; the restriction upon the plaintiff's possession and control is, we think, one that the testator had a right to make” *Id.* (explaining beneficiaries' request and court's general reasoning for denying it).

44. *See* Ausness, *supra* note 4, at 256 (explaining that *Clafin* has come to apply to both trust termination and modification).

45. *See* Fogel, *supra* note 7, at 349 (describing dueling views of “freedom of disposition” and “professed interests of . . . beneficiaries”); Chester & Ziomek, *supra* note 5, at 247 (suggesting that *Clafin* doctrine may be “too restrictive of beneficiaries' rights to play the corporate fiduciary market”); *see also id.* at 275 (arguing that whatever solution is proposed to solve inequality of power between corporate trustees and beneficiaries, it must strike a balance “between easy portability . . . and the interests of [the settlor] . . . in establishing the trust deal”).

46. *See In re Western Pennsylvania National Bank*, 225 A.2d 676, 678 (Pa. 1967) (“It has long been the well established law in Pennsylvania that a testator's intent is the polestar in interpreting a will.”); *Clark v. Clark*, 191 A.2d 417, 420–21 (Pa. 1963) (“No principle in the law of wills and trusts is more firmly and clearly established than that the intention of the testator or settlor must prevail.”) (citation omitted). The Supreme Court of Pennsylvania was rather unsympathetic to beneficiaries simply unhappy with their trustee, requiring in one case that the beneficiaries show a violation of some fiduciary duty. *See In re White*, 484 A.2d 763, 765–66 (Pa. 1984) (refusing to remove trustee, even though beneficiaries were unhappy with trustee, because no fiduciary duty was violated). The Supreme Court of Pennsylvania in *In re Burleigh* outlined the Pennsylvania “hornbook law” regarding settlor primacy as it stood in 1961:

It is now hornbook law (1) that the testator's intent is the polestar and must prevail; and (2) that his intent must be gathered from a consideration of (a) all the language contained in the four corners of his will and (b) his scheme of distribution and (c) the circumstances surrounding him at the time he made his will and (d) the existing facts; and (3) that technical rules or canons of construction should be resorted to only if the language of the will is ambiguous or conflicting or the testator's intent is for any reason uncertain. . . .

under older Pennsylvania law.⁴⁷ The same strictness applied to trustee removal; to successfully petition to remove a trustee, Pennsylvania courts generally required some proof of fault on the part of the trustee.⁴⁸ Courts justified this high bar of trustee removal by rooting its analysis in settlor intent—if the settlor chose a particular trustee, the courts reasoned that that decision should be respected.⁴⁹

In 2006, however, Pennsylvania saw a dramatic change in its trust law with the enactment of the Uniform Trust Act (UTA).⁵⁰ Pennsylvania practitioners noted that this was a major shift in the law, with many firms issuing notices to their clients or fellow practitioners about the changed law and its important effects.⁵¹ Pennsylvania based the UTA off of the Uni-

See In re Burleigh, 175 A.2d 838, 839 (Pa. 1961) (outlining Pennsylvania treatment of settlor intent in trust interpretation).

47. *See In re Bosler's Estate*, 107 A.2d 443, 445–46 (Pa. 1954) (holding that without settlor consent, a spendthrift trust cannot be terminated even if all beneficiaries agree). A “spendthrift trust” is, “[a] trust that prohibits the beneficiary’s interest from being assigned and also prevents a creditor from attaching that interest; a trust by the terms of which a valid restraint is imposed on the voluntary or involuntary transfer of the beneficiary’s interest.” *See Trust*, BLACK’S LAW DICTIONARY (10th ed. 2014) (defining “spendthrift trust” under main definition of trust).

48. *See In re Mathues's Estate*, 185 A. 768, 769 (Pa. 1936) (holding that hostility between trustee and beneficiaries was not provoked by trustee and therefore did not warrant removal of trustee); *In re Hurley's Estate*, 169 A.81, 82 (Pa. 1933) (holding that “personal antagonism” not enough to warrant removal of trustee); *In re Neafie's Estate*, 49 A. 129, 132 (Pa. 1901) (“If any personal annoyance or discomfort arises in her business relations with the trustee, it is to be regretted; but, so far as the testimony discloses, he is not responsible for it, and should not be punished by dismissal from his trust.”).

49. *See Neafie*, 49 A. at 130 (holding that settlor chose trustee for a reason and court should try to honor that decision by not removing trustee “at mere whim or caprice of the beneficiary”); *see also Mathues*, 185 A. at 769 (affirming holding in *Neafie* that “there must be a substantial reason before the court will remove a trustee, who enjoyed the confidence of the person who created the trust”); *In re Bailey's Estate*, 159 A. 549, 551 (Pa. 1932) (“It is a serious matter to dismiss trustees appointed by will; much more should be shown by those who wish them dismissed than would be the case where the trustees are appointed by the court.”).

50. *See* 20 PA. STAT. AND CONS. STAT. ANN. § 7701 (West 2010) (naming new legislation governing Pennsylvania trust law as “Uniform Trust Act”). Pennsylvania adopted this new for a variety of reasons: to make the law more accessible and easier to find to make Pennsylvania trust law easier to work with when dealing with trust relationships that span more than one state, to increase the law’s uniformity, and, generally, to “improve the law.” *See* Thomas Work, *An Organized Trust Statute for Pennsylvania: Introduction to the Uniform Trust Act*, PHILA. BAR ASS’N PROBATE AND TR. LAW SECTION NEWSLETTER, <http://www.philadelphiabar.org/WebObjects/PBAReadOnly.woa/Contents/WebServerResources/CMSResources/ProbateTrustSeptember2006.pdf> [https://perma.cc/K8BB-LXVF] (explaining major reasons why Pennsylvania adopted UTA in place of old Pennsylvania trust law).

51. *See Pennsylvania Law of Trusts Commentary: Revolution or Evolution? Pennsylvania's New Uniform Trust Act*, K&L GATES (Jan. 2007), <http://www.klgates.com/pennsylvania-law-of-trusts-commentary-revolution-or-evolution—pennsylvanias-new-uniform-trust-act-01-09-2007/> [https://perma.cc/L97G-U26E] (explaining in “private clients alert” existence of new Pennsylvania trust law and major changes in new law); *The Pennsylvania Uniform Trust Act*, NAUMAN SMITH (Oct. 19, 2006),

form Trust Code (UTC), a model code written by the Uniform Law Commission.⁵² The Uniform Law Commission stated that it created the UTC to provide national uniformity to trust law and create a number of “innovative provisions.”⁵³

As a comprehensive piece of trust legislation, Pennsylvania’s UTA explicitly governs both trustee removal and trust modification/termination for irrevocable trusts.⁵⁴ Section 7740.1(b) of the UTA broadly allows trust modification and termination; it states that, “[a] noncharitable irrevocable trust may be modified upon the consent of all the beneficiaries only if the court concludes that the modification is not inconsistent with a material purpose of the trust,” and that “[a] noncharitable irrevocable trust may be terminated upon consent of all the beneficiaries only if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust.”⁵⁵ Section 7766 of the UTA focuses just on trustee removal and outlines the circumstances in which a court may remove a trustee; it states that,

<https://www.nssh.com/2006/10/the-pennsylvania-uniform-trust-act/> [<https://perma.cc/JS5M-PD9N>] (notifying clients of new Pennsylvania trust law); Work, *supra* note 50 (giving general overview of Uniform Trust Act for Philadelphia area practitioners).

52. *See, e.g.*, 20 PA. STAT. AND CONS. STAT. ANN. § 7701 (referencing UTC counterpart Section 101 in title of Section 7701). To promote national uniformity of legislation, the Uniform Law Commission (ULC) has promulgated various model acts to simplify and stabilize various areas of law. *See About the ULC*, UNIFORM LAW COMMISSION, <http://www.uniformlaws.org/Narrative.aspx?title=about%20the%20ULC> [<https://perma.cc/FV89-2L8K>] (last visited Oct. 12, 2018) (“The Uniform Law Commission . . . established in 1892, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.”). As it stands, thirty-one states (plus Washington, D.C.) have adopted some form of the Uniform Trust Code, with Illinois having introduced UTC-based legislation this year. *See Trust Code*, UNIFORM LAW COMMISSION (2018), <http://www.uniformlaws.org/Act.aspx?title=trust%20Code> [<https://perma.cc/8TT2-JN49>] (displaying map of states whose trust laws are based off UTC or whose state legislatures have introduced legislation based off UTC).

53. *See Prefatory Note*, UNIFORM TRUST CODE (2000), http://www.uniformlaws.org/shared/docs/trust_code/utc_final_rev2010.pdf [<https://perma.cc/S7UW-CXGC>] (explaining how Uniform Trust Code, written in 2000, includes number of “innovative provisions” such as “rules on trust modification and termination that will enhance flexibility”).

54. *See* 20 PA. STAT. AND CONS. STAT. ANN. § 7766 (providing procedure and four different scenarios in which court may order removal of current trustee); *see also id.* § 7740.1 (allowing for modification or termination of “noncharitable irrevocable trust by consent” if certain conditions are met).

55. *See id.* § 7740.1(b) (outlining requirements for irrevocable trust modification when settlor is dead). Section 7740.1 also allows for irrevocable trust modification *without* court approval and in contravention of the trust’s material purpose if all the beneficiaries and the settlor consent. *See id.* § 7740.1(a) (allowing modification or termination of irrevocable trust without court approval and in contravention of trust’s material purpose if settlor and all beneficiaries consent).

[a] court may remove a trustee if it finds that removal of the trustee best serves the interests of the beneficiaries of the trust and is not inconsistent with a material purpose of the trust, a suitable cotrustee or successor trustee is available and: (1) the trustee has committed a serious breach of trust; (2) lack of cooperation among cotrustees substantially impairs the administration of the trust; (3) the trustee has not effectively administered the trust because of the trustee's unfitness, unwillingness or persistent failures; or (4) there has been a substantial change of circumstances.⁵⁶

While Section 7766 allows for no-fault trustee removal under a substantial change of circumstances in Section 7766(b)(4), in that same subsection the statute explicitly bars classifying mergers or reorganizations as a substantial change of circumstances (mergers exception).⁵⁷

In addition, courts wishing to interpret these sections of Pennsylvania's UTA must do so via Pennsylvania's Statutory Construction Act (Construction Act).⁵⁸ In guiding a court's analysis, the Construction Act mandates that a court first look to the language of the statute to discern the meaning of the statute.⁵⁹ Only when the statute is "not explicit or [is] ambiguous" may the court apply other canons of statutory construction.⁶⁰

56. *See id.* § 7766 (giving court authority to remove trustee under limited circumstances). In addition, Section 7766 leaves the court with the power to remove the trustee independent of any beneficiary petition. *See id.* (allowing for independent court intervention to remove trustee).

57. *See id.* § 7766(b)(4) ("A corporate reorganization of an institutional trustee, including a plan of merger or consolidation, is not itself a substantial change of circumstances.").

58. *See* 1 PA. STAT. AND CONS. STAT. ANN. § 1901 (West 1972) ("In the construction of the statutes of this Commonwealth, the rules set forth in this chapter shall be observed, unless the application of such rules would result in a construction inconsistent with the manifest intent of the General Assembly.").

59. *See id.* (explaining first step—as imposed by the Construction Act—is to simply look at plain language of statute to try to discern meaning). The Construction Act—referenced to by the court—specifically states, "[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." *See id.* § 1921(b) (imposing rule that plain language of statute normally controls interpretation of such statute).

60. *See* Tr. Under Agreement of Taylor, 164 A.3d 1147, 1155 (Pa. 2017) (citing 1 PA. STAT. AND CONS. STAT. ANN. § 1921(c) (West 1972); *Nardone v. Commonwealth, Dep't of Transp., Bureau of Driver Licensing*, 130 A.3d 738, 744 (Pa. 2015); *Allstate Prop. & Cas. Ins. Co. v. Wolfe*, 105 A.3d 1181, 1186–87 (Pa. 2014) (explaining that the Construction Act and Supreme Court of Pennsylvania case law support proposition that plain language controls interpretation of statute unless such statute is deemed to be ambiguous).

C. *Times are Changing: Superior Court Broadens Ability of Pennsylvania Trustees to Remove Corporate Trustee through No-Fault Provision of Section 7766*

A recent Pennsylvania case, *In re McKinney*,⁶¹ has challenged the notion that Section 7766(b)(4) (the no-fault trustee removal provision) strictly bars consideration of a corporate trustee's merger or reorganization if a removal petition is based on a "substantial change of circumstances."⁶² In that case, the Superior Court of Pennsylvania held that when a corporate trustee has undergone a "string of mergers" and the beneficiaries of the trust moved to a different state, a substantial change of circumstances had occurred and thus Section 7766(d) was satisfied.⁶³ In *McKinney*, the trustees petitioned a Pennsylvania court to remove the current corporate trustee of one of two trusts (both of which they were beneficiaries of), asserting a substantial change in circumstances.⁶⁴

In its analysis, the court noted that the Pennsylvania General Assembly marked Section 7766 to indicate that it was based off its corresponding section in the UTC.⁶⁵ Due to the section's connection to the UTC, the court examined other states' analyses of this trustee removal section and found that they "uniformly" compared the current corporate trustee and the proposed trustee when considering the merits of removing the current trustee.⁶⁶ The court also noted that while the settlor's choice of trustee is normally given high deference, this degree of deference changes when a

61. 67 A.3d 824 (Pa. Super. Ct. 2013).

62. Compare 20 PA. STAT. AND CONS. STAT. ANN. § 7766(b)(4) (barring trustee removal on grounds of substantial change in circumstances if change in circumstance is only different corporate trustee vis a vis mergers or acquisitions), with *McKinney*, 67 A.3d at 836 (holding that "string of mergers" can be factor court considers in allowing trustee removal under Section 7766(b)(4)).

63. See *McKinney*, 67 A.3d at 836 ("After careful consideration, we find under the circumstances of this case that a string of mergers over several years, resulting in the loss of trusted bank personnel, coupled with the movement of a family from Pennsylvania to Virginia, constitutes a substantial change in circumstances.").

64. See *id.* at 827 (explaining why beneficiaries petitioned court and what they claimed warranted corporate trustee removal). The trust in question did not originally include a portability provision, which would have allowed easier removal of the corporate trustee. See *id.* at 826 (explaining lack of portability provision in original trust document). The beneficiaries requested the removal of the corporate trustee so the two trusts (of which they were beneficiaries) could share a single corporate trustee. See *id.* at 828 (explaining reasons stated by beneficiaries as to why they wanted to remove corporate trustee from trust).

65. See *id.* at 831 ("Section 7766 is marked as a section that was based upon the UTC, to which the UTC comments are applicable.").

66. See *id.* (citing *Rapela v. Green*, 289 P.3d 428, 435 (Utah 2012)); *Davis v. U.S. Bank Nat. Ass'n*, 243 S.W.3d 425, 430 (Mo. Ct. App. 2007); *In re Fleet Nat. Bank's Appeal from Prob.*, 837 A.2d 785, 797 (Conn. 2004) (noting that states such as Connecticut, Missouri, and Utah have found that "implicit in the best interest analysis is comparison between the current trustee and the proposed successor trustee").

trust has a corporate trustee rather than an individual trustee.⁶⁷ The court concluded, in part, that a court should consider a variety of factors when deciding if a change in trustee would be in the best interests of the beneficiaries: the relationship of the trustee with the beneficiaries, the trustee's knowledge of the trust and the beneficiaries' financial status, and whether the trustee is convenient for the beneficiaries.⁶⁸ Crucially, the court concluded that while mergers or corporate reorganizations by themselves do not constitute a substantial change in circumstances (because of the explicit mergers exception in Section 7766(b)(4)), a "string of mergers" that resulted in a "loss of trusted bank personnel," coupled with the out-of-state move of the beneficiaries constituted a substantial change in circumstances.⁶⁹ Thus, the trustee removal was granted.⁷⁰

67. *See id.* at 835 (noting that while removal of settlor's choice of *individual* trustee would be "drastic," in facts of *McKinney* corporate trustee has undergone more than six mergers and is thus "farther removed from the original trustee").

68. *See id.* at 833 (concluding that in analyzing whether current or proposed trustee best serves beneficiaries' interests, various factors should be included in analysis). The court's test in full is quite lengthy:

We conclude that courts should consider the following factors when determining whether a current trustee or a proposed successor trustee best serves the interests of the beneficiaries: personalization of service; cost of administration; convenience to the beneficiaries; efficiency of service; personal knowledge of trusts' and beneficiaries' financial situations; location of trustee as it affects trust income tax; experience; qualifications; personal relationship with beneficiaries; settlor's intent as expressed in the trust document; and any other material circumstances.

Id. (citing *Rapela*, 289 P.3d at 435–36; *Davis*, 243 S.W.3d at 430–31; *In re Fleet Nat. Bank's Appeal from Prob.*, 837 A.2d at 797 n.17; *Fleet Bank v. Foote*, No. CV020087512S, 2003 WL 22962488, at *3 (Conn. Super. Ct. Dec. 2, 2003)) (listing factors to consider in beneficiaries' interest test).

69. *See id.* at 836–37 (holding that multiple bank mergers resulting in change in bank personnel plus out-of-state move of beneficiaries constituted substantial change in circumstances under section 7766(b)(4)). The court specifically noted the "change in character" of the trustee services after the corporate trustee went through a merger. *See id.* (noting change in service after certain bank officers stopped working for corporate trustee after merger occurred). Generally, the court noted that the corporate trustee's "trust administration services" had "declined." *See id.* at 837 (noting drop in quality of service from corporate trustee).

70. *See id.* (holding that trial court erred in denying trustee removal). Firms in Pennsylvania noted that the *McKinney* decision seemed to expand beneficiaries' ability to remove their corporate trustee through Section 7766's no-fault provision. *See* Lee R. Allman & Dean A. Walters, *Free Agent Season Open for Pennsylvania Trust Beneficiaries*, PHILA. BAR ASS'N PROBATE AND TR. LAW SECTION NEWSLETTER (July 16, 2013), <http://www.philadelphiatrust.com/wp-content/uploads/2014/12/Free-Agent-Season-Open-for-PA-Trust-Beneficiaries-3.pdf> [<https://perma.cc/C39Y-AHLE>] (arguing that *McKinney* balances power between corporate trustees and beneficiaries); Charles J. Avalli, *New Way to Remove Trustee*, GENTILE, HOROHO & AVALLI, P.C. (Sept. 2016), <http://gha-lawfirm.com/new-way-to-remove-trustee/> [<https://perma.cc/4WWP-QH9B>] (noting that, because of *McKinney*, beneficiaries have gained power in ability to control their trusts); Marshall, *supra* note 18 (noting that *McKinney* decision makes it easier for beneficiaries to remove their trustee).

III. GHOSTS OF CENTURIES PAST: THE *TAYLOR TRUST* FALLS AT THE CENTER OF A CONTROVERSY ALMOST ONE HUNDRED YEARS AFTER ITS CREATION

The *Taylor* controversy began almost 100 years before its beneficiaries ended up at the Supreme Court of Pennsylvania when, in 1928, Edward Winslow Taylor created a trust (Taylor Trust).⁷¹ At the time of its formation, the purpose of the Taylor Trust was to care for Edward Winslow Taylor's daughter, Anna Taylor Wallace.⁷² Initially, Taylor named Colonial Trust Company "or its successors" as the trust's corporate trustee.⁷³ Within ten years of the trust's creation, Taylor amended it twice: once in 1928, shortly after its creation, and once in 1930.⁷⁴ By the 1930 amendment, Colonial Trust Company (the original corporate trustee) had already merged into a new corporation, which was subsequently recognized by Taylor in the 1930 amendment.⁷⁵

The Taylor Trust's broad purpose was to provide "care" for Anna Taylor Wallace and her children.⁷⁶ Fittingly, the terms dictating the trustee duties were also broad, with the corporate trustee retaining wide discretion in distributing the trust income to Anna Taylor Wallace.⁷⁷ Taylor

71. See *Tr. Under Agreement of Taylor*, 164 A.3d 1147, 1150 (Pa. 2017) (explaining formation of trust at center of *Taylor* case, including its almost 100-year duration). For a more in-depth discussion of Sections 7766 and 7740.1 of Pennsylvania's UTC, see *supra* notes 54–57 and accompanying text.

72. See *Taylor*, 164 A.3d at 1150 (explaining general purpose of trust was to take care of Taylor's daughter and her children that were alive at time of trust's creation).

73. See *id.* (explaining Taylor's designation of trust's corporate trustee). The Taylor Trust had, for much of its duration, a corporate *and* personal trustee; at the time of Taylor's death in 1939, Anna Wallace Taylor became co-trustee, executing her trustee duties alongside the corporate trustee. See *id.* (detailing when Anna Taylor Wallace became co-trustee of Taylor Trust). Anna Wallace Taylor remained co-trustee until her death in 1971, at which point her son, Frank R. Wallace, became co-trustee until his death in 2008. See *id.* (outlining succession of personal trustees). For an explanation of a corporate trustee and how it differs from personal trustee, see *supra* notes 33–34 and accompanying text.

74. See *id.* (identifying two modifications made to trust by settlor after trust's 1929 creation). The original trust document from 1928 allowed the corporate trustee to use all of the principal to benefit Taylor's daughter, but the 1930 trust document modification scaled back this power and only allowed the corporate trustee to distribute the trust's income. See *id.* at 1150–51 (explaining notable changes made to Taylor Trust in 1930). In addition, the 1930 trust document modification removed an arbitration provision found in the original trust document. See *id.* at 1151 (noting elimination of arbitration provision that Taylor included in original, 1928 trust document).

75. See *id.* (noting, during 1930 amendment of trust document, Taylor's acknowledgement of new bank entity as corporate trustee).

76. See *Edward Winslow Taylor, Intervivos Tr., No. 132702*, 2014 WL 12746880, at *1 (Pa. Com. Pl. Aug. 18, 2014), *rev'd sub nom. Tr. Under Agreement of Taylor*, 124 A.3d 334 (Pa. Super. Ct. 2015), *rev'd*, 164 A.3d 1147 (Pa. 2017) (describing general purpose of Taylor Trust).

77. See *id.* (quoting 9/4/13 Elise Carr Petition, Ex. C (9/25/30 Trust Amendment, ¶ 3(a))) (describing trustee duties and powers as designated in Taylor Trust

made the trust irrevocable and had it set to terminate in 2028, 100 years after its creation.⁷⁸ During her lifetime, Anna Taylor Wallace retained the power to designate who the trust's beneficiary would be after her death; she later utilized that power to name her son, Frank R. Wallace, Jr., as successor beneficiary.⁷⁹ After Frank Wallace's death in 2008, his four children became the trust's beneficiaries.⁸⁰ In 2009, Wells Fargo became corporate trustee of the Taylor Trust, and it shortly thereafter requested to split the trust into four separate trusts, of equal value, for the four beneficiaries.⁸¹

After Wells Fargo assumed the role of corporate trustee, some of the trust's beneficiaries petitioned the Orphans' Court of Philadelphia County and requested to modify the trust.⁸² The Taylor Trust beneficiaries based their petition on Section 7740.1 of Pennsylvania's UTA (the general trust modification section), rather than on the more specific trustee removal provision found in Section 7766.⁸³ While the beneficiaries sought to add various paragraphs to the trust document, the controversial change at the heart of *Taylor* was the beneficiaries' request to include a portability provision that would give the beneficiaries the power to replace Wells Fargo

document). Specifically, the trust document directed the corporate trustee to distribute the "net income . . . 'at convenient times' during [her life]." *See id.* (outlining specific language in Taylor Trust document that gave corporate trustee broad power to distribute trust income to trust beneficiary).

78. *See id.* (noting that trust terminates in 2028). Taylor also allowed the trust to terminate before its 100-year expiration date if twenty years had passed after the death of the last survivor of Anna Taylor Wallace. *See id.* (describing alternate trust termination device if Anna Taylor Wallace had no living survivors before 2028).

79. *See id.* (describing Anna Taylor Wallace's power to choose successor beneficiary and her choice to name her son, Frank R. Wallace, Jr.).

80. *See id.* at *2 (describing trust developments in twenty-first century, including Frank Wallace's four children becoming Taylor Trust beneficiaries after his death).

81. *See* Tr. Under Agreement of Taylor, 164 A.3d 1147, 1150 (Pa. 2017) (identifying Wells Fargo as new Taylor Trust trustee and describing Wells Fargo's request to split Taylor Trust into quarters, all of equal value); *Taylor*, 2014 WL 12746880, at *2 (describing Taylor Trust split, as requested by Wells Fargo). Wells Fargo petitioned the court to split the Taylor Trust under the authority of 20 Pa. C.S.A. Section 7740.7(b). *See Taylor*, 2014 WL 12746880, at *2 (describing statutory authority to split Taylor Trust). At the time of subdivision, the Taylor Trust was worth 1.8 million dollars. *See id.* (citing 9/4/13 Elise Carr Petition, ¶¶ 2–12) (stating value of trust at time of subdivision).

82. *See Taylor*, 164 A.3d at 1151 (presenting actions of some Taylor Trust beneficiaries that began trust modification controversy).

83. *See id.* (describing alleged statutory authority beneficiaries relied on when they petitioned Orphans' Court to modify Taylor Trust). The Orphans' Court noted that the beneficiaries could not rely on Section 7740.1(a), but rather had to rely on 7740.1(d) because of two general reasons: (1) the Taylor Trust settlor had died, and (2) one of the Taylor Trust beneficiaries did not join the remaining three in petitioning the Orphans' Court. *See Taylor*, 2014 WL 12746880, at *4 (commenting on limited avenues of relief under Section 7740.1 because settlor had died and not all beneficiaries consented to trust modification).

with a new corporate trustee of their choosing.⁸⁴ Moreover, the beneficiaries only sought to amend the trust and did not indicate in their petition that they planned to immediately remove Wells Fargo as corporate trustee if the court granted their request.⁸⁵

Wells Fargo opposed the removal petition and argued that the beneficiaries' reliance on Section 7740.1 was misguided and that Section 7766 exclusively controls trustee removal.⁸⁶ The beneficiaries countered, arguing that Section 7740.1 allows general modification of a trust, which includes modifying a trust to include a portability provision.⁸⁷ In 2014, the Philadelphia Orphans' Court ruled that the beneficiaries' attempted use of Section 7740.1 was barred due to Section 7766, which exclusively controls trustee removal.⁸⁸

84. *See Taylor*, 164 A.3d at 1151 (describing Taylor Trust document changes sought by beneficiaries); *see also Taylor*, 2014 WL 12746880, at *4 ("In essence, the three beneficiaries seek to modify the Taylor Trust agreement so that by consent of the beneficiaries—alone—without any court petition or approval, a corporate trustee may be removed."). Specifically, the three beneficiaries petitioned the court to add four new paragraphs: (1) detailing notice requirements for trustee removal and voting requirements for election of a substitute corporate trustee; (2) allowing for a majority of current income beneficiaries to remove the corporate trustee, without cause; (3) stating that if the power in paragraph two is exercised, the new corporate trustee will be chosen by the trustees who decided to remove the previous trustee, and the new corporate trustee will be located in Pennsylvania; and (4) clarifying that any reference to "Trust" includes any trust that exists as a result of a subdivision of the original Taylor Trust. *See Taylor*, 164 A.3d at 1151–52 (quoting Petition to Modify Trust Agreement, 9/4/2013, ¶ 24) (including exact language of trust modifications three Taylor Trust beneficiaries sought to include in trust document).

85. *See Taylor*, 164 A.3d at 1152 (noting that beneficiaries did not seek to immediately remove Wells Fargo as corporate trustee if modification provision were granted).

86. *See id.* (describing Wells Fargo's arguments against allowing modification of Taylor Trust); *Taylor*, 2014 WL 12746880, at *5 (describing Wells Fargo's specific arguments to Orphans' Court).

87. *See Taylor*, 164 A.3d at 1152 (describing beneficiaries' arguments in support of their proposed Taylor Trust document modifications).

88. *See Taylor*, 2014 WL 12746880, at *7 (holding that beneficiaries could not use Section 7740.1(d) to amend trust document to include trustee removal provision). In its reasoning, the Orphans' Court noted from the outset that the beneficiaries' use of Section 7740.1 was not a "home run," addressing both the lack of unanimous consent of all the beneficiaries (only three of the four Taylor Trust beneficiaries petitioned the court) and phrasing in Section 7740.1 that "opens the door to Wells Fargo's compelling arguments." *See id.* at *5 (introducing trust modification issue and suggesting that its solution is not clear-cut). The Orphans' Court defended its holding that there was latent ambiguity regarding which section controlled trust modification. *See id.* (explaining why court found that Pennsylvania law was ambiguous as to whether Section 7740.1 could apply to trustee removal). In holding this, the court noted that: (1) the beneficiaries state that use of 7740.1 will protect the interest of all beneficiaries, but they do not explain how; and (2) Section 7740.1 refers to "this section," which could very well refer to Section 7766 and not to 7740.1. *See id.* (quoting 20 PA. STAT. AND CONS. STAT. ANN. § 7740.1(d)(1) (West 2006)) (providing reasons why court does not see beneficiaries' argument as a "home run"). In its reasoning, the Orphans' Court both

The beneficiaries appealed to Pennsylvania's Superior Court, which reversed the Orphans' Court decision and found that the beneficiaries could use Section 7740.1 to modify the Taylor Trust to include a portability provision.⁸⁹ In rejecting the Orphans' Court opinion, the Superior Court identified three main errors: (1) the court's premise that a petition to modify the trust was the equivalent of removing Wells Fargo as a trustee; (2) the court's holding that there was ambiguity in Pennsylvania's trust statute; and, related to number two, (3) the court's reliance on UTC comments to aid in interpreting UTA statutes.⁹⁰ Wells Fargo then appealed the Superior Court's decision and the Supreme Court of Pennsylvania

recognized that Pennsylvania's UTA was based off the UTC and conceded that its enactment in the early twenty-first century represented an expansion on beneficiaries' ability to remove a trustee. *See id.* at *6 (quoting *In re McKinney*, 67 A.3d 824, 832, n.12 (Pa. Super. Ct. 2013)) (noting close relationship between Uniform Trust Code and Pennsylvania's trust statute). However, this expanded ability did not become unlimited, and the Orphans' Court determined that because an ambiguity existed between the applicability of 7740.1 and 7766, the more specific Section 7766 should exclusively control trustee removal. *See id.* at *6 (citing 20 PA. STAT. AND CONS. STAT. ANN. § 7701) (holding that ambiguity in Pennsylvania trust law exists regarding what section controls trustee removal); *see also id.* (holding that when there is ambiguity between two statutory provisions, more specific provision controls).

89. *See Tr. Under Agreement of Taylor*, 124 A.3d 334, 335–37 (Pa. Super. Ct. 2015), *rev'd*, 164 A.3d 1147 (Pa. 2017) (explaining that case was on appeal from Orphans' Court of Philadelphia County and reversing that court's decision). The court laid out the two issues on review as whether the Orphans' Court decision that Section 7740.1 “must yield” to Section 7766 regarding the addition of a portability provision was correct, and whether the Orphans' Court erred by “derogat[ing] . . . well-settled principles of statutory constriction . . . [by] overid[ing] the clear and unambiguous text of the trust modification provisions of [Section 7740.1]?” *See id.* at 336–37 (explaining issues upon appeal to Superior Court).

90. *See id.* at 341–42 (outlining three reasons why Orphans' Court erred in denying beneficiaries' petition to modify Taylor Trust). The Superior Court reasoned that because no ambiguity existed between Sections 7740.1 and 7766, the beneficiaries could utilize Section 7740.1—and 7740.1 alone—to modify the Taylor Trust to include the portability provision. *See id.* at 341 (holding that because of lack of ambiguity, plain reading of Section 7744.1 allows modification of Taylor Trust). Perhaps a sign that this particular fight was not over, Judge Platt of the Superior Court dissented and argued that there is indeed a conflict between the two sections, and thus, (akin to the reasoning of the Orphans' Court) the more specific 7766 should exclusively apply. *See id.* at 342–43 (Platt, J., dissenting) (arguing that general Orphans' Court reasoning was correct and that ambiguity between Sections 7766 and 7740.1 requires exclusive application of Section 7766 to trust modification to add portability provision). Judge Platt also noted, in addition to his determination of ambiguity within the statute, that the Pennsylvania Legislature “had the opportunity to expand the grounds for removal of a corporate trustee . . . and declined to do so.” *See id.* at 343 (noting that Pennsylvania Legislature's adoption of UTC did not include broad corporate trustee removal provisions). In addition, Judge Platt criticized the majority's “false premise argument” (that is, the addition of a portability provision equals trustee removal) and stated that the majority's rejection of this premise “eviscerate[s]” Section 7766 for any kind of trustee removal. *See id.* at 343 (arguing that premise declared “false” by majority indeed exists and its rejection results in total nullification of Section 7766 for trustee removal).

granted review, ultimately overturning the Superior Court's decision and holding that the Taylor beneficiaries could not use Section 7740.1 to modify the trust to add a portability provision.⁹¹

IV. OPTING NOT TO UPDATE: SUPREME COURT OF PENNSYLVANIA
DECLINES ADOPTING THE VIEW THAT WOULD EXPAND
BENEFICIARIES' ABILITY TO REMOVE A TRUSTEE

Taylor was an issue of first impression for the Orphans' Court, with the case centering on the Taylor beneficiaries' ability to modify an irrevocable trust to include a provision that would allow removal of the trust's corporate trustee.⁹² Specifically, *Taylor* examined the tension between two provisions in Pennsylvania's trust law, Sections 7740.1 (general provision regarding trust modification) and 7766 (specific provision regarding trustee removal).⁹³ On appeal, Wells Fargo criticized the Superior Court's decision by claiming that the court refused to "apply basic principles of statutory construction."⁹⁴ The Taylor beneficiaries countered, unsurprisingly, that modification of the Taylor Trust should be permitted because: (1) they should have the chance to place their older trust "on the same footing" as modern trusts; (2) the banking industry has changed significantly since 1928; and (3) other states that adopted the UTC specifically designated their trustee removal provision as the exclusive provision to

91. See *In re Taylor*, 134 A.3d 447, 448 (Pa. 2016) (granting review on issue of "whether the Superior Court erred in holding that trust beneficiaries may circumvent the requirements for removal of a trustee in Section 7766 of the Trust Act . . . by amending the trust under [section 7740.1]."); *Taylor*, 164 A.3d at 1149 (explaining that case is on appeal from Superior Court and holding that Superior Court erred in its analysis of whether Section 7740.1 can be used, alone, to modify Taylor Trust to include portability provision).

92. See *Taylor*, 2014 WL 12746880, at *1 (explaining that analysis of interplay between Sections 7766 and 7740.1 was issue of first impression for Pennsylvania courts).

93. See *Taylor*, 164 A.3d at 1154–55 (describing problem before court as having to decide which statutory provision can be used to modify Taylor Trust to add portability provision). For a discussion of Pennsylvania's trust law and more specifically, Sections 7740.1 and 7766 of the UTA, see *supra* notes 50–57 and accompanying text.

94. See *Taylor*, 164 A.3d at 1153–54 (describing Wells Fargo's arguments that Superior Court failed to apply basic canons of statutory interpretation when it found for Taylor beneficiaries). Wells Fargo saw an "obvious inconsistency" between Sections 7740.1 and 7766 and argued that if its decision was to be upheld, "beneficiaries seeking to remove trustees will no longer resort to Section 7766" See *id.* at 1153 (describing Wells Fargo's articulation of Superior Court's alleged main error and effect of that error). In addition, Wells Fargo emphasized Pennsylvania's history of great deference shown to settlors of trusts and that when Pennsylvania enacted the UTA (in 2006) it rejected a proposed provision that would have allowed removal of a trustee based on the agreement of all the trust's beneficiaries. See *id.* at 1154 (outlining Wells Fargo's arguments that general Pennsylvania trust law history and rejection of proposed provision in 2006 supports contention that trust beneficiaries should not hold broad trustee removal power).

govern trustee removal, something that the Pennsylvania legislature did not do.⁹⁵ Amidst the noise of the various arguments set forth by both parties, the Supreme Court of Pennsylvania's task was rather straightforward: examine the "interplay" between the two Pennsylvania trust statute provisions and decide if Section 7740.1 allows the beneficiaries to amend their trust to add a portability provision.⁹⁶

The court prefaced its entire statutory analysis by explaining the constraints imposed by the Construction Act.⁹⁷ Based upon the Construction Act's statutory "ground rules," the *Taylor* court ultimately concluded that the Superior Court's decision to read Sections 7740.1 and 7766 as unrelated sections violated the Construction Act's canons of interpretation.⁹⁸ In coming to this conclusion, the court first determined that the UTA was ambiguous as to whether Section 7740.1 and 7766 applied to trustee removal or whether *just* Section 7766 applied to trustee removal.⁹⁹ Due to this ambiguity, the court applied canons of statutory construction and found that because Section 7766 more specifically addresses trustee removal, it exclusively governs that action.¹⁰⁰ The court determined that Sections 7766 and 7740.1 were ambiguous partly due to the opposing interpretations of the statute offered by Wells Fargo and the beneficiaries were both reasonable.¹⁰¹

95. *See id.* (describing beneficiaries' general arguments on appeal). The beneficiaries insisted that because the Taylor Trust was created in 1928 and did not include modern trust provisions, they were "held captive to Wells Fargo as a derivative trustee." *See id.* (relaying beneficiaries' argument that, as policy matter, they should be allowed to amend Taylor Trust to include portability provision). In the same "lack-of-modernity" vein, the beneficiaries contended that Edward Winslow Taylor, in 1928, was alive during a time in which the character of the banking industry was dramatically different and that he could not have foreseen the various changes that it would undergo. *See id.* (highlighting beneficiaries' arguments that banking industry changed dramatically between 1928 and 21st century, something Taylor Trust settlor did not anticipate). Lastly, the beneficiaries contended that other states that adopted the UTC "expressly precluded modification to permit portability," and because Pennsylvania did not expressly prohibit this, the Supreme Court of Pennsylvania should not "engage in judicial rewriting . . . to insert limitations that the legislature did not choose to include." *See id.* (outlining beneficiaries' final point that because Pennsylvania legislature did not expressly prohibit modification to include portability provision, court should infer that it is allowed).

96. *See id.* at 1154–55 (describing main issue court was tasked to resolve upon appeal).

97. *See id.* at 1155 (introducing Pennsylvania's Statutory Construction Act as statutorily imposed guide to statutory interpretation).

98. *See id.* at 1155, 1161 (holding that Sections 7766 and 7740.1 must be read together, as part of cohesive statute, and thus, Section 7766 must exclusively control trustee removal).

99. *See id.* at 1156 (holding that ambiguity exists in statute regarding which provisions apply to trustee removal).

100. *See id.* at 1158–61. For a discussion of the court's statutory analysis of Sections 7766 and 7740.1, see *supra* notes 92–99 and accompanying text, and see *infra* notes 101–05 and accompanying text.

101. *See Taylor*, 164 A.3d at 1156 (citing *Commonwealth v. Moran*, 104 A.3d 1136, 1146 (Pa. 2014)) ("Because both interpretations plausibly give effect to the

The court considered three general factors when concluding that Section 7766 exclusively applies to trustee removal: first, the UTA should be interpreted such that it is comprised of harmonious provisions; second, Pennsylvania has a history of limited trustee removal powers; and third, the Pennsylvania legislature did not intend to allow trustee removal through Section 7740.1.¹⁰² The court also found that because the Pennsylvania legislature intended Sections 7766 and 7740.1 to be based off of the UTC, official comments of the UTC applied to the corresponding UTA sections.¹⁰³ The court found that the drafters of the UTC—evi-

plain language of the two provisions, a latent ambiguity exists.” (citation omitted)). The court explained in more detail that it found the UTA to be ambiguous because of three reasons: (1) the court “has repeatedly held that there is an ambiguity when there are at least two reasonable interpretations of the relevant text;” (2) “neither section contains any explicit language addressing the issue raised here;” and (3) there is a lack of specific language in either section “with respect to whether section 7740.1’s modification power extends to the modification of other statutory provisions of the UTA.” *See id.* at 1155–56 (providing three reasons as to why court found that Sections 7766 and 7740.1 are ambiguous regarding their application to trustee removal by beneficiaries). For a discussion of the two parties’ differing interpretations of the applicability of Sections 7766 and 7740.1, see *supra* notes 86–87, 94–95 and accompanying text.

102. *See Taylor*, 164 A.3d at 1157 (“A fundamental principle in statutory construction is that we must read statutory sections harmoniously.” (citing *Commonwealth v. Office of Open Records*, 103 A.3d 1276, 1284–85 (Pa. 2014)); *id.* at 1159 (describing how Pennsylvania legislature declined to adopt provision that would allow beneficiaries of a trust to remove a trustee without any showing of trustee being at fault); *id.* at 1158 (“Pennsylvania has a long history of strictly limiting the removal and replacement of a trustee to circumstances in which an Orphans’ Court determines that good cause exists to do so.”). When holding that the UTA should be interpreted as comprised of harmonious sections, the court noted that one section of a statute should not nullify another section of the same statute. *See id.* at 1157 (“Importantly, this presumption requires that statutory sections are not to be construed in such a way that one section operates to nullify, exclude or cancel another, unless the statute expressly says so.”). The court found that allowing Section 7740.1 to govern trustee removal would nullify “the effectiveness of [S]ection 7766.” *See id.* (holding that one canon of statutory interpretation requires harmonious reading of various sections of statute, and thus Section 7740.1 cannot apply to trustee removal because it would nullify effects of 7766). The court noted the “significant contrast” between the two sections, with Section 7740.1 requiring only the showing that the change would not violate a material purpose of the trust, while Section 7766 requiring “substantial evidentiary hurdles” like (among other requirements) proving there is some problem with the current trustee. *See id.* 1157–58 (describing contrasting requirements of Sections 7740.1 and 7766).

103. *See id.* at 1160–61 (holding UTC comments apply to corresponding provisions in Pennsylvania’s UTA). The court concluded that the uniform law comments could apply to Pennsylvania’s law by first looking to the Construction Act, which allows general legislative history to be used as an interpretive device, as long as the text reigns supreme if there is a conflict between the two. *See id.* at 1159 (explaining allowed use of “comments or report” of drafting “commission, committee, association or other entity” to aid in interpreting statute (citation omitted)). The court continued to explain that the UTA explicitly states that “the sections of the UTA that are substantially similar to their UTC counterparts are indicated by a reference to the UTC section number in the UTA section headings”

denced by the official comments—did not intend Section 7740.1 to encompass beneficiary modification of a trust to remove a trustee.¹⁰⁴ All these factors, taken together, allowed the court to come to the conclusion that the Taylor beneficiaries could not use Section 7740.1 to modify the Taylor Trust to add a portability provision.¹⁰⁵

V. NEW CENTURY, SAME PROBLEM: *TAYLOR* DECISION LIMITING TRUSTEE REMOVAL TO SECTION 7766 OF UTA INVOKES SPIRIT OF *CLAFLIN* AND RAISES CONCERNS REGARDING PERPETUAL CORPORATE TRUSTEES

In *Taylor*, the Supreme Court of Pennsylvania denied the beneficiaries' argument that Pennsylvania's trust modification provision found in Section 7740.1 could be used to bring about trustee removal via a portability provision.¹⁰⁶ Notably, in a time when beneficiary powers over their trusts have been expanding, the *Taylor* decision represents a bright-line rule limiting beneficiaries' power to remove their trustees.¹⁰⁷ The glim-

and that UTC comments apply to UTA provisions as long as the two are similar. *See id.* at 1159–60 (explaining test for applicability of UTC comments to Pennsylvania's UTA provisions). The court found Section 7740.1 to contain a reference to its UTC counterpart, and thus considered the UTC comment. *See id.* at 1160 (“The heading for section 7740.1 contains a reference to the corresponding UTC section number (UTC 411), and we may thus consider the UTC's Uniform Law Comment as evidence of the General Assembly's intent with respect to the proper application and scope of section 7740.1.” (citation omitted)).

104. *See id.* at 1160–61 (holding that UTC comments, which apply to sections of UTA that are based off UTC, indicate that Section 7740.1 was not meant to allow for trustee removal). The UTC comment notes that the trustee removal provision (Section 706, or 7766 in Pennsylvania's UTA) is the “exclusive provision on removal of trustees.” *See id.* at 1160 (quoting 20 PA. STAT. AND CONS. STAT. ANN. § 7740.1 (West 2006)) (reciting UTC comment, in full, which explains that trustee removal provision in UTC is exclusive avenue for trustee removal). After examining the uniform law comment, court became confident in its holding:

[L]egislative intent with respect to the interplay between sections 7740.1 and 7766 is clear—the scope of permissible amendments under section 7740.1 does not extend to modifications to add a portability clause permitting beneficiaries to remove and replace a trustee at their discretion; instead, removal and replacement of a trustee is to be governed exclusively by section 7766.

See id. at 1160–61 (finding that UTC comments bolster holding that 7766 is exclusive provision for trustee removal).

105. *See id.* at 1161 (holding that Section 7740.1 cannot be used to modify trust to add portability provision).

106. *See id.* at 1154 (explaining beneficiaries' argument that Section 7740.1 (trust modification provision) can be utilized to add portability provision); *id.* at 1161 (holding that Section 7740.1 cannot be used to modify Taylor Trust to add portability provision).

107. *See Ausness, supra* note 4, at 263 (explaining how powers of beneficiaries to modify or terminate trusts has “significantly expanded” during twenty-first century); *see also Taylor*, 164 A.3d at 1161 (“Instead, as the UTC comment to section 7740.1 reflects, section 7766 of the UTA is the ‘exclusive provision regarding removal of trustees.’” (quoting 20 PA. STAT. AND CONS. STAT. ANN. § 7740.1)).

mer of hope offered by the favorable Superior Court decision was snuffed out as the Taylor beneficiaries learned that they were confined within the bounds of Section 7766 to remove their corporate trustee.¹⁰⁸

The Supreme Court of Pennsylvania's decision to take this approach reflects a more traditional interpretation of trust law—both in America and in Pennsylvania—that emphasized limited beneficiary rights and high respect for the settlor's intent.¹⁰⁹ In this new world of Pennsylvania trustee removal, further examination of Section 7766—to which trustee removal is now confined—shows how the internal provisions of that section even further limit removal of corporate trustees with its “mergers exception.”¹¹⁰ The *Taylor* decision—taken in the context of this mergers exception—pointedly highlights concerns some scholars have regarding the power perpetual corporate trustees have over much-less-powerful beneficiaries.¹¹¹

A. *Old Trustees Die Hard: Mergers Exception in Section 7766 Adds Extra Layer of Protection for Corporate Trustees in Removal Petitions*

As a practical matter, it is crucial for counsel of all Pennsylvania trust beneficiaries to understand both that a new limitation on corporate trustee removal exists and that Section 7766 is now the exclusive avenue for trustee removal.¹¹² The Taylor beneficiaries' goal was a lofty one, and had they succeeded, Pennsylvania trust beneficiaries would have had significant power to remove their trustees.¹¹³ After *Taylor*, Pennsylvania trust

108. See *Tr. Under Agreement of Taylor*, 124 A.3d 334, 342 (Pa. Super. Ct. 2015), *rev'd*, *Tr. Under Agreement of Taylor*, 164 A.3d 1147 (Pa. 2017) (holding that Orphan's Court decision denying beneficiaries the ability to use Section 7740.1 to modify trust to add portability provision was in error).

109. See *Chester*, *supra* note 4, at 704 (noting how *Clafin* doctrine emphasized settlor control, even after settlor's death); *Fogel*, *supra* note 7, at 349 (explaining that under *Clafin* test, “the overwhelming majority of beneficiaries are unsuccessful in their attempts to terminate or modify trusts”). For a discussion of the *Taylor* court's decision and its connection to older treatment of trust modification and termination in Pennsylvania, see *supra* notes 106–08 and accompanying text, and see *infra* notes 110–25 and accompanying text.

110. For a discussion on the internal limitations of Section 7766, see *supra* notes 56–57 and accompanying text, and see *infra* notes 112–25 and accompanying text.

111. For a discussion on concerns scholars have regarding corporate trustees and their power over beneficiaries in irrevocable trusts, see *infra* notes 126–34 and accompanying text.

112. For a discussion of Section 7766 and the limitations it imposes on beneficiaries wishing to remove their corporate trustees, see *infra* notes 113–26 and accompanying text.

113. See *Edward Winslow Taylor, Intervivos Tr., No. 132702*, 2014 WL 12746880, at *1, *4 (Pa. Com. Pl. Aug. 18, 2014), *rev'd sub nom. Tr. Under Agreement of Taylor*, 124 A.3d 334 (Pa. Super. Ct. 2015), *rev'd*, 164 A.3d 1147 (Pa. 2017) (“In essence, the three beneficiaries seek to modify the Taylor Trust agreement so that by consent of the beneficiaries—alone—without any court petition or approval, a corporate trustee may be removed.”); see also *Taylor*, 164 A.3d at 1158

beneficiaries, and their lawyers, must now operate within the much stricter confines of Section 7766.¹¹⁴

Section 7740.1 would have allowed modification of an irrevocable trust via divided beneficiary consent if the modification did not violate a material purpose of the trust.¹¹⁵ Notably, the ease of modification or termination under this section liberalizes the requirements of the *Claffin* doctrine, such as not requiring unanimous beneficiary consent.¹¹⁶ Section 7766, by contrast, attaches various requirements before a court can sanction a removal of a trustee: finding that removal is in the best interests of beneficiaries, finding a suitable alternative trustee, not violating the material purpose of the trust, and falling within one of four specific scenarios outlined by the section.¹¹⁷

Three of the four specific scenarios that provide an avenue for trustee removal under Section 7766 (Section 7766(b)(1)–(3)) require some showing of fault on the part of the trustee; however, the last scenario (Section 7766(b)(4)) stands apart in that it only requires a substantial change in circumstances.¹¹⁸ In the context of corporate trustee removal (like the fact-pattern in *Taylor*), the no-fault “substantial-change-of-circumstances” requirement comes with a large caveat: the mergers exception.¹¹⁹ The mergers exception specifically excludes mergers and reorganizations of corporate trustees as constituting a substantial change of circumstances.¹²⁰ The implications of this exception are large: Pennsylvania trust beneficiaries with corporate trustees that have undergone various mergers

(noting that when analyzing both Sections 7740.1 and 7766, Section 7740.1 has “no comparable evidentiary requirements”).

114. See *Taylor*, 164 A.3d at 1161 (holding that Section 7766 is exclusive provision for trustee removal in Pennsylvania).

115. See 20 PA. STAT. AND CONS. STAT. ANN. § 7740.1(b) (West 2006) (“A non-charitable irrevocable trust may be terminated upon consent of all the beneficiaries only if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust.”); see also *Taylor*, 164 A.3d at 1158 (noting that Section 7740.1 merely requires showing that modification is not inconsistent with material purpose of trust).

116. Compare Fogel, *supra* note 7, at 340 (explaining that *Claffin* test requires unanimous beneficiary consent and “material purpose” test), with 20 PA. STAT. AND CONS. STAT. ANN. § 7740.1(b) (providing avenue for irrevocable trust modification or termination with less-than-unanimous beneficiary consent).

117. See 20 PA. STAT. AND CONS. STAT. ANN. § 7766(b) (listing requirements petition to remove trustee must meet for court to be able to find that trustee removal is appropriate).

118. See *id.* (listing four avenues that, any of which if satisfied, would allow for trustee removal, with last avenue standing apart because it does not require showing of fault on part of trustee). For the exact language of Section 7766, see *supra* notes 56–57 and accompanying text.

119. See § 7766(b)(4) (limiting substantial change of circumstances avenue of trustee removal with mergers exception).

120. See *id.* (“A corporate reorganization of an institutional trustee, including a plan of merger or consolidation, is not itself a substantial change of circumstances.”); see also *Taylor*, 164 A.3d at 1150 (noting that Wells Fargo became corporate trustee of Taylor Trust after a “series of . . . mergers”).

and acquisitions could be forced to continue dealing with that corporate trustee unless they can prove one of the first three “fault provisions” found in Section 7766 (b)(1)–(3).¹²¹ Thus, in a manner even more strict than *Claflin* (which requires a material purpose analysis and unanimous beneficiary consent), in a scenario where a corporate trustee has experienced many mergers and does not act in a way that would satisfy any of the fault provisions, the court would not grant the removal.¹²² Theoretically, this means that even if *all* beneficiaries consent and the removal of a corporate trustee does not violate a material purpose of the trust (thus satisfying the traditional *Claflin* test), the court could still deny removal.¹²³ By largely limiting corporate trustee removal to the first three fault provisions, *Taylor* reflects old Pennsylvania trustee removal cases that demanded that the beneficiaries come to court and show fault on the part of the trustee.¹²⁴ In this light, one could interpret *Taylor* as adopting a trustee removal rule that, in the spirit of *Claflin*—and actually stricter than *Claflin*—gives high deference to the settlor’s original choice of trustee.¹²⁵

121. See § 7766(b) (providing no other “no-fault” provision that could be used as alternate to § 7766(b)(4) because of that section’s “mergers exception” that would bar substantial change of circumstances argument just because corporate trustee went through string of mergers).

122. See Fogel, *supra* note 7, at 340 (listing *Claflin* test, which does not include showing of fault or problem/defect in trust document). *But see In re McKinney*, 67 A.3d 824, 827 (Pa. Super. Ct. 2013) (allowing removal of corporate trustee via Section 7766(b)(4) substantial change of circumstances provision even though corporate trustee had experience many mergers). Indeed, even the *Claflin* “material purpose” test may not be too high of a standard in the trustee removal context; the case *Matter of May C. Hogan Trust*, out of South Dakota, suggested that switching from one trustee to another trustee who can perform the same administrative duties as the other could not violate the *Claflin* material purpose test. See Chester & Ziomek, *supra* note 5, at 261 (“By incorporating the *Claflin* standard, the *Hogan* court implied a term that a switch of trustees would be possible if it did not violate a material purpose of the settlor: one bank or another could perform the functions the settlor had in mind; the court, however, concluded that such an analysis would have to be conducted on a case-by-case basis.” (footnotes omitted)).

123. See 20 PA. STAT. AND CONS. STAT. ANN. § 7766(b) (requiring satisfaction of one of four scenarios to satisfy trustee removal statute and successfully remove trustee); see also Chester & Ziomek, *supra* note 5, at 249 (noting that “absent a breach of trust, current American trust law generally backs the banks in [trustee removal] matters”). For a discussion of the *Claflin* test, see *supra* notes 41–45 and accompanying text.

124. See *In re Mathues’ Estate*, 185 A. 768, 769–70 (Pa. 1936) (holding that hostility between trustee and beneficiaries was provoked by trustee and therefore did not warrant removal of trustee); *In re Hurley’s Estate*, 169 A. 81, 81–82 (Pa. 1933) (holding that “personal antagonism” not enough to warrant removal of trustee); *In re Neafie’s Estate*, 49 A. 129, 131–32 (Pa. 1901) (“If any personal annoyance or discomfort arises in her business relations with the trustee, it is to be regretted; but, so far as the testimony discloses, he is not responsible for it, and should not be punished by dismissal from his trust.”).

125. See Chester & Ziomek, *supra* note 5, at 251 (defining *Claflin* doctrine as requiring unanimous beneficiary consent and ensuring termination or modification of trust did not contravene material purpose of trust); see also Ausness, *supra* note 4, at 239 (“Nevertheless, it is still fairly difficult to modify or terminate a trust

B. *Old Power Struggle: Taylor Decision Highlights Concerns Regarding Power of Corporate Trustees Over Less Powerful Beneficiaries*

Placing trustee removal beyond the scope of Section 7740.1 and squarely within the confines of Section 7766, the *Taylor* decision implicates what some scholars see as an unequal playing field between beneficiaries and perpetual corporate trustees.¹²⁶ These corporate trustees, endowed with great power from an unchanging trust document, can be viewed as intimidating and adept at winning legal proceedings that challenge their trustee status.¹²⁷ Perhaps most emblematic of this perceived imbalance, in some instances corporate trustees have the right to use trust funds to defend the trust against any legal proceeding, including those initiated by the trust's very own beneficiaries.¹²⁸ Thus, because the mergers exception largely makes the "fault provisions" of Section 7766 the only avenue of relief, beneficiaries will have to decide whether they have the means and energy to formally litigate against their corporate trustee to bring about its desired removal.¹²⁹

under the traditional regime."); *id.* at 294 (explaining that settlor's use trusts as a way to exert control over property); Chester & Ziomek, *supra* note 5, at 252 (noting that "[a]bsent authority in the trust instrument or a showing of breach of trust by the trustee" the likelihood of trustee removal is low). *Clafin* is not without its critics, and some have argued that the trust doctrine *Clafin* inspired may work against the settlor's wishes by limiting beneficiaries' ability to control a trust made specifically for their benefit. See Chester & Ziomek, *supra* note 5, at 250 ("Thus, in continuing to hold the settlor's intent paramount under *Clafin*, American courts and lawmakers are tying the hands of the beneficiaries, whose interests the settlor was originally concerned with promoting." (footnote omitted)).

126. For a discussion on commentary regarding the power dynamic between corporate trustees and beneficiaries, see *infra* notes 127–140 and accompanying text.

127. See Smith, *supra* note 5, at 573–76 (outlining difficulties beneficiaries can face if they challenge corporate trustee in court). Smith outlines various ways in which beneficiaries may find taking their corporate trustee to court intimidating or futile, such as the great power corporate trustees have over trust resources, corporate trustees' ability to "dictate administrative and dispositive policies" without beneficiary consent, and practical difficulties of going to court, such as high legal fees. See *id.* at 573–74 (describing reasons some beneficiaries may be apprehensive initiating court proceeding to remove corporate trustee). In addition, beneficiaries may fear taking their claim to court purely because trust law is complicated. See *id.* at 573 ("While trust law is commendable for its breadth, flexibility and attention to the wishes of settlors, often it is too complicated and lacking of 'bright lines' for rigorous administration in practical situations, and as a result, much less understandable to beneficiaries.").

128. See Chester & Ziomek, *supra* note 5, at 242 (describing case in which beneficiary realized that in trustee removal case initiated by her, bank trustee was able to use trust's property to fund trustee's defense); see also Smith, *supra* note 5, at 574 (explaining how corporate trustee may retain expensive counsel to defend trustee removal suit, and that that defense may very well be funded by trust property).

129. See 20 PA. STAT. AND CONS. STAT. ANN. § 7766(b) (West 2006) (requiring court approval to remove trustee).

This problem of trustee-beneficiary inequality is even more potent in older trust documents because they often include corporate trustees that were chosen before dramatic changes in the banking industry (the Taylor Trust was created in 1928).¹³⁰ Decades ago, corporate trustees were mostly local banking institutions who had trust departments not to make a profit, but rather to develop the image that the bank was involved in its community.¹³¹ Beneficiaries wielded greater power at that point in time because if they were unsatisfied with their trustee, the local bank's reputation could be damaged.¹³² Modern corporate trustees of older trust documents, by contrast, exist behind the protective barriers of largely non-modifiable trusts when they should be competing in a competitive market.¹³³ While evading this market competition, corporate trustees have also morphed their trust departments from reputation-gaining devices, with little regard for profit, to decidedly profit-driven enterprises.¹³⁴

130. See Tr. Under Agreement of Taylor, 164 A.3d 1147, 1150 (Pa. 2017) (stating date of Taylor Trust creation); see also Chester & Ziomek, *supra* note 5, at 250 (stating that settlor often named "hometown bank" as trustee with basis for decision being "a personal relationship" with such bank). As such, Chester and Ziomek argue that the various changes of the banking industry "may destroy both this special relationship and undercut the settlor's primary reason for selecting the bank." See Chester & Ziomek, *supra* note 5, at 250 (footnote omitted) (commenting on how bank mergers may "destroy" local character of bank that prompted settlor to choose bank when creating trust). Newer trusts largely avoid the problem of unmodifiable trust documents by containing a removal clause that grant the beneficiaries some measure of control over their trusts." See Smith, *supra* note 5, at 578 (explaining how modern trusts differ from older trusts in context of trustee removal powers).

131. See Smith, *supra* note 5, at 566 (explaining that before changes in banking industry, corporate banks had trust departments to "foster the image of the bank as a caring institution and [to] assist in maintaining the lines of communication between old and potentially valuable future customers").

132. See *id.* (explaining that if bank improperly administered trust and bank trust beneficiaries were unsatisfied, word-of-mouth commentary throughout the community could put corporate trustee in check).

133. See *id.* at 578 (arguing that "easing access to alternative corporate administration enhances competition . . . while discouraging corporate excess"). While many beneficiaries feel frustrated with the performance of their corporate trustee but helpless to do anything about it, corporate trustee competition could lower fees and allow beneficiaries to "shop around." See Chester & Ziomek, *supra* note 5, at 247 ("Because today's banking industry is engaged in such large volumes of trust asset transfers and sales from bank to bank, the *Clafin* doctrine seems too restrictive of beneficiaries' rights to play the corporate fiduciary market."). For example, most beneficiaries do not have control over the fees that the corporate trustee sets. See Smith, *supra* note 5, at 572 (noting that corporate trustees can raise rates on beneficiaries even though beneficiaries lack ability to "seek[] more cost effective administration").

134. See Smith, *supra* note 5, at 567 (noting that one effect of development of banking industry is "the transformation of the trust department into a major profit center with an increasing demand that the corporate trustee show loyalty to client and stockholder alike even though their interests are fundamentally in conflict"). As the "business" of trust administration grew, trust funds became increasingly less associated with the local bank. See Chester & Ziomek, *supra* note 5, at 248 ("As banks continue to merge, consolidate, and dissolve, trust funds are transferred

Various solutions are proposed that attempt to balance the interests of trust beneficiaries with the longstanding practice that the settlor's decisions, as reflected in the trust's language, should be respected.¹³⁵ One such solution premises all of trust law as derived from the principles of contract law, thus affording beneficiaries some third-party rights as they would under an implied term in an ordinary beneficiary contract.¹³⁶ A different solution envisions a new legislative framework that provides for a series of "checks and balances" between corporate trustees and beneficiaries, such as mandatory disclosure rights, required beneficiary approval over some trustee actions, and co-sharing of trust assets between the beneficiaries and the trustee.¹³⁷

A reform specific to Pennsylvania—envisioned by Pennsylvania practitioner Timothy J. Holman in response to the *Taylor* decision—would amend Pennsylvania's UTA to allow beneficiaries to add a portability provision to their trust if the trust was created before 1985, the trust does not specifically prohibit a portability clause, and the replacement trustee meets certain qualifications.¹³⁸ Holman hopes that this amendment

daily from bank to bank as part of the banking industry's normal course of business." (footnote omitted)). Thus, concerns arise when banks have to try to balance (if they can) the interest of the trust beneficiary and the bank's shareholders. See Smith, *supra* note 5, at 569 (explaining tension corporate bank trust departments face).

135. See generally Chester & Ziomek, *supra* note 5, at 275 (noting that any reform to corporate trustee removal must try to strike a balance between respecting settlor intent and allowing beneficiaries to exert some control over potentially underperforming corporate trustees). For a discussion of some proposed reforms, see *infra* notes 136–40 and accompanying text.

136. See Chester & Ziomek, *supra* note 5, at 274 (explaining contractual theory of trust law that would afford beneficiaries more rights to control trust document). Specifically, the contract theory states that the settlor and the corporate trustee contract to benefit the beneficiary, and that agreement "carries an implied term that the fiduciary shall administer the trust in the best interests of the beneficiaries." See *id.* (describing how contractual theory would inject into agreement between settlor and trustee a term that trust is in best interests of beneficiaries). In addition, this "best interests" implied term would allow beneficiaries to amend trust document if the change conforms with the traditional *Claflin* material purpose test. See *id.* (describing how under contract theory, beneficiaries would have ability to remove trustee if such removal did not violate material purpose of trust); *id.* at 267 ("This means that replacement of trustees and continuation of the trust, even if not expressly stated, are generally contemplated in the original trust deal, whether or not this deal is seen as having elements of a relational contract." (footnote omitted)).

137. See Smith, *supra* note 5, at 573 (advocating for new trust legislation that would restrain "leverage of a corporate trustee" through measures "such as mandatory disclosure . . . rights[,] . . . provision for an individual co-trustee/trust protector, a power of the beneficiaries to choose their own corporate trustee, provision within the instrument for beneficiary approval over certain [trustee] actions, and . . . co-custody").

138. See Timothy J. Holman, *The Pennsylvania Supreme Court's Taylor Trust Opinion Requires a Legislative Fix*, PHILA. BAR. ASS'N PROBATE AND TR. LAW SECTION NEWSLETTER, Oct. 2017, at 3, 3–4 (describing proposed amendment to "fix" negative impact of *Taylor* decision). To prevent relentless trustee removal, the proposed

would provide relief to “a specific subclass of trusts swept into the extraordinarily broad reach of [*Taylor*].”¹³⁹ While these proposed reforms vary in their scope and approach, they collectively highlight the growing chorus of voices calling for beneficiaries—especially those of older trusts—to have more power over corporate trustees than they presently possess.¹⁴⁰

VI. FACING THE IMMEDIATE FUTURE: AS PENNSYLVANIA PRACTITIONERS GRAPPLE WITH LIMITED TRUSTEE REMOVAL POWERS, A RECENT PENNSYLVANIA COURT CASE MAY PROVIDE AN ALTERNATIVE AVENUE FOR RELIEF

While legislative reform or a comprehensive change in the way courts view trust law may provide relief for beneficiaries in the long run, the effect of the *Taylor* decision is immediate and affects all of Pennsylvania.¹⁴¹ What, then, can beneficiaries of Pennsylvania trusts do to remove their corporate trustee?¹⁴² While use of Section 7740.1 is no longer a viable option to bring about removal of a corporate trustee, another case may provide an alternate avenue of relief for *some* trustee removal petitions.¹⁴³ *In re McKinney*, decided in 2013 by the Pennsylvania Superior Court, caught the attention of Pennsylvania practitioners because it seemed to make removal of corporate trustees easier under the no-fault provision of Section 7766(b)(4).¹⁴⁴ The case was praised for providing “a roadmap

amendment would only allow beneficiaries to remove a trustee under this section once every five years. *See id.* at 4 (limiting beneficiaries’ ability to replace trustee to once every five years).

139. *See id.* at 4 (explaining proposed UTA amendment and justifying it through explanation of perceived overinclusion of trusts affected by *Taylor* decision).

140. For a discussion of criticisms regarding power dynamic between corporate trustees and beneficiaries and the proposed reforms to fix this problem, see *supra* notes 126–39 and accompanying text.

141. *See* Tr. Under Agreement of Taylor, 164 A.3d 1147, 1161 (Pa. 2017) (denying Taylor beneficiaries’ present petition to modify Taylor Trust via Section 7740.1 of UTA); *see also* *Supreme Court of Pennsylvania*, THE UNIFIED JUDICIAL SYSTEM OF PENNSYLVANIA, <http://www.pacourts.us/courts/supreme-court/> [<https://perma.cc/L36N-SG9A>] (explaining that Supreme Court of Pennsylvania highest court in state of Pennsylvania).

142. For a discussion of a potential solution to the set-back *Taylor* presents to dissatisfied beneficiaries of corporate trustees, see *infra* notes 143–55 and accompanying text.

143. *See In re McKinney*, 67 A.3d 824, 827 (Pa. Super. Ct. 2013) (allowing removal of corporate trustee via Section 7766(b)(4) substantial change of circumstances provision). For a discussion of the favorable door *McKinney* may open for dissatisfied beneficiaries of corporate trustees, see *infra* notes 144–55 and accompanying text.

144. *See* Marshall, *supra* note 18 (explaining that “it is getting easier for beneficiaries to change the trustee” as result of *McKinney* decision); *see also* Avalli, *supra* note 70 (noting that “balance of power” in “corporate trustee world” has swung back towards beneficiaries as result of *McKinney* decision).

and balanced standards for beneficiaries” hoping to remove an “unsatisfactory corporate [trustee].”¹⁴⁵

Indeed, unsatisfied beneficiaries whose hopes were dashed that Section 7740.1, and its few standards, could apply to trustee removal may find their next best hope in *McKinney*.¹⁴⁶ *McKinney* suggests that Pennsylvania courts are willing to add an asterisk after the mergers exception of Section 7766(b)(4), meaning that while the mergers exception still stands, a corporate trustee’s mergers and reorganizations can *still* play a part in the court’s analysis of whether trustee removal is warranted.¹⁴⁷ In *McKinney*, the court specifically noted the corporate trustee’s change in personnel, resulting from a “string of mergers,” when it decided that removal was warranted.¹⁴⁸ Specifically, the *McKinney* decision suggests that the mergers exception does not preclude consideration of a corporate trustee’s mergers; rather, it means that a removal petition cannot stand on mergers alone and requires at least a second factor.¹⁴⁹ In *McKinney*, the out-of-state move of the beneficiaries was the second factor that ultimately allowed the court to conclude that removal was warranted under Section 7740.1.¹⁵⁰

Notably, the Supreme Court of Pennsylvania did not expressly limit this second factor to out-of-state moves.¹⁵¹ Eager beneficiaries may want to try substituting another second factor, like the out-of-state move in *McKinney*, that could trigger a similar type of analysis by a Pennsylvania court.¹⁵² However, basing a removal action on *McKinney* may be wading out into unknown waters; the case was the first to examine this type of issue in Pennsylvania, and it came out of the Superior Court, which is not the highest court in Pennsylvania.¹⁵³ The *Taylor* decision may very well be

145. See Allman & Walters, *supra* note 70 (arguing that *McKinney* balances power between corporate trustees and beneficiaries and is “welcome relief to captive Pennsylvania trusts”).

146. For a discussion of *McKinney* and its potential liberalizing effect on no-fault corporate trustee removal, see *infra* notes 147–55 and accompanying text.

147. See *McKinney*, 67 A.3d at 837 (noting that in its holding that removal is warranted, mergers and reorganizations of *McKinney*’s corporate trustee can be considered as factor in court’s analysis).

148. See *id.* at 836 (“After careful consideration, we find under the circumstances of this case that a string of mergers over several years, resulting in the loss of trusted bank personnel, coupled with the movement of a family from Pennsylvania to Virginia, constitutes a substantial change in circumstances.”).

149. See *id.* (holding that substantial change of circumstances has occurred because there was change in personnel as result of mergers “coupled” with out-of-state move).

150. See *id.* (designating out-of-state move as one half of analysis that allowed court to come to conclusion that substantial change of circumstances occurred).

151. See *id.* at 830–37 (not limiting substantial change of circumstances “second factor” to just out-of-state move).

152. See *id.* (granting beneficiaries’ removal petition).

153. See, e.g., *Supreme Court of Pennsylvania*, *supra* note 141 (explaining hierarchy of Pennsylvania judicial system); see *McKinney*, 67 A.3d at 836 (noting that there is lack of case law as to what constitutes substantial change of circumstances).

a signal that Pennsylvania courts are unwilling to liberalize trustee removal as seen in *McKinney*.¹⁵⁴ Alternatively, *Taylor* could serve as a reminder that beneficiaries' best chance at no-fault removal already exists, and that to have a future free of unsatisfactory corporate trustees, beneficiaries need only look back to *McKinney*.¹⁵⁵

154. See *Tr. Under Agreement of Taylor*, 164 A.3d 1147, 1161 (Pa. 2017) (declining to expand trust beneficiaries' ability to remove trustee by limiting trustee removal to Section 7766 of UTA). For a discussion of how the *Taylor* decision may reflect older Pennsylvania treatment of trustee removal, see *supra* notes 106–25 and accompanying text.

155. See *McKinney*, 67 A.3d at 837 (allowing no-fault removal of corporate trustee). For a discussion of the potential effects of *McKinney*, see *supra* notes 141–54 and accompanying text.