Missouri Law Review

Volume 67
Issue 2 *Spring 2002*

Article 11

Spring 2002

Get Your Dead Hands Off Me: Beneficiaries' Right to Terminate or Modify a Trust under the Uniform Trust Code

Julia C. Walker

Law Summary

Get Your Dead Hands Off Me: Beneficiaries' Right to Terminate or Modify a Trust Under the Uniform Trust Code

I. INTRODUCTION

Known as "perhaps the most distinctive achievement of English lawyers,"[1] trusts have emerged as a favored means of estate planning, wealth management, and charitable giving in recent years.[2] A trust is a property management mechanism in which a manager, called a trustee, holds legal title to the trust property, and owes a fiduciary duty to a beneficiary, who holds title to the property in equity.[3] The requirements for establishing a trust are relatively

---

1. Gerry W. Beyer, *Simplification of Inter Vivos Trust Instruments: From Incorporation by Reference to the Uniform Custodial Trust Act and Beyond*, 32 S. TEX. L. REV. 203, 206 (1991).

2. ROGER W. ANDERSEN, UNDERSTANDING TRUSTS AND ESTATES § 2, at 9 (2d ed. 1999).

3. *Restatement (Second) of Trusts* describes a trust as follows:

> A trust, as the term is used in the *Restatement* of this subject, when not qualified by the word "charitable," "resulting" or "constructive," is a fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it.

RESTATEMENT (SECOND) OF TRUSTS § 2 (1959); *see also* RESTATEMENT (THIRD) OF TRUSTS § 2 (Tentative Draft No. 1, 1996) (stating "[a trust] is a fiduciary relationship with respect to property, arising as a result of a manifestation of an intention to create that relationship and subjecting the person who holds title to the property to duties to deal with it for the benefit of charity or for one or more persons, at least one of whom is not the sole trustee").

uncomplicated,[4] making trusts a valuable and straightforward estate planning device.[5]

Private express trusts are useful to settlors for numerous reasons.[6] Inter vivos trusts, created and funded during the settlor's lifetime,[7] allow the settlor to control his or her property while allowing portions of the corpus[8] to pass to beneficiaries during either the settlor's life or following his or her death.[9] A major advantage of the inter vivos trust is that it is not subject to probate.[10] Conversely, testamentary trusts[11] are created by will and, therefore, subject to probate.[12] Nevertheless, testamentary trusts enable a settlor to provide for the needs of incompetent or minor beneficiaries after the settlor's death[13] and are somewhat easier to establish than are inter vivos trusts.[14] Additionally, trusts of

---

4. The creation of a trust generally requires that: (1) the settlor has the capacity to create a trust; (2) the settlor indicates an intention to create a trust; and (3) the trust has a definite beneficiary. UNIF. TRUST CODE § 402(a)(1)-(3) (2000) [hereinafter UTC]. Furthermore, in most states, inter vivos trusts have no execution requirements and the court has no continuing role in administration. *See also* GEORGE G. BOGERT & GEORGE T. BOGERT, THE LAW OF TRUSTS AND TRUSTEES § 1 (2d ed. rev. 1992) (stating the requirements of a trust as: (1) an intent that the property be held for the benefit of another; (2) the existence of at least one beneficiary who may enforce the trust terms; and (3) an existing or ascertainable property interest).

5. Professor Beyer has argued, however, that legislatively- and judicially-imposed rules place trusts "beyond the reach of many people who would benefit from their prudent use." Beyer, *supra* note 1, at 206; *cf.* ANDERSEN, *supra* note 2, § 2, at 9 (stating that "[b]ecause trusts are so flexible, they are the most useful single estate planning device").

6. ANDERSEN, *supra* note 2, § 11, at 91. For a discussion of the advantages and disadvantages of revocable trusts as estate planning tools, see JESSE DUKEMINIER & STANLEY M. JOHANSON, WILLS, TRUSTS AND ESTATES 379-87 (6th ed. 2000).

7. A settlor is "one who creates a trust. . . . One who furnishes the consideration (*res*) for the creation of a trust." BLACK'S LAW DICTIONARY 956 (7th ed. 1999). Conversely, a testator is "[o]ne who makes or has made a testament or will [or] one who dies leaving a will." *Id.* at 1028.

8. *Corpus* is defined as "the principal sum, or capital, as distinguished from interest or income. [It is t]he main body or principal of a trust." *Id.* at 239.

9. ANDERSEN, *supra* note 2, § 11, at 92.

10. ANDERSEN, *supra* note 2, § 11, at 92.

11. A testamentary trust is "[a] trust that is created by a will and takes effect when the settlor (testator) dies. BLACK'S LAW DICTIONARY 1518 (7th ed. 1999); *see also* RESTATEMENT (THIRD) OF TRUSTS § 17 (Tentative Draft No. 1, 1996); RESTATEMENT (SECOND) OF TRUSTS § 53 cmt. a (1959).

12. ANDERSEN, *supra* note 2, § 11, at 92-93.

13. *See* ANDERSEN, *supra* note 2, § 13, at 109-13.

14. ANDERSEN, *supra* note 2, § 13, at 109-13.

any type, in certain circumstances, can result in estate, gift, or income tax savings.[15]

Although the advantages of using trusts are well established, the law governing the extent to which trust provisions can be altered is not.[16] The growing popularity of trusts in recent years has elevated the importance of this issue,[17] but the legislative response has been sluggish and incomplete.

In 1983, Missouri enacted a statutory provision, Missouri Revised Statutes Section 456.590.2, that authorizes beneficiaries to terminate trusts.[18] Unlike the majority position expressed in the *Claflin* doctrine,[19] the Missouri statute is devoid of deference to the settlor's intent and, instead, requires a court to find that proposed alterations, including termination, benefit beneficiaries who are unable to represent themselves in a proceeding, such as those who are unascertained or incompetent.[20] The scope of the Missouri statute recently has gained heightened importance for a number of reasons. First, the manner in which Americans distribute their wealth is changing, and trusts are a flexible wealth management tool.[21] Second, the Rule Against Perpetuities[22] is losing favor and already has been repealed by statute in some states, including

---

15. *See generally* JOHN J. REGAN ET AL., TAX AND ESTATE PLANNING FOR THE ELDERLY ch. 17 (2001).

16. *See* UTC prefatory note; *infra* notes 97-113 and accompanying text.

17. *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, 700 (2001).

18. The relevant provision of the Missouri statute provides:

> When all of the adult beneficiaries who are not disabled consent, the court may, upon finding that such variation will benefit the disabled, minor, unborn and unascertained beneficiaries, vary the terms of a private trust so as to reduce or eliminate the interests of some beneficiaries and increase those of others, to change the times or amounts of payments and distributions to beneficiaries, or to provide for termination of the trust at a time earlier or later than that specified by the terms.

MO. REV. STAT. § 456.590.2 (2000).

19. The crux of the *Claflin* doctrine is that the trust should not be terminated where the change would breach the settlor's intent in creating the trust. Claflin v. Claflin, 20 N.E. 454 (Mass. 1889); *see infra* notes 41-48 and accompanying text.

20. MO. REV. STAT. § 456.590.2 (2000).

21. *See* Chester, *supra* note 17, at 698 (stating that recent developments have led to accumulations of wealth and are leading people to create family dynasties, often through trusts).

22. The Rule Against Perpetuities states: "No interest is good unless it must vest, if at all, not later than twenty-one years after some life in being at the creation of the interest." J. GRAY, THE RULE AGAINST PERPETUITIES § 201, at 191 (4th ed. 1942).

Missouri.[23] This change, however, flags concern that, where a trust can exist indefinitely, it becomes increasingly likely that the settlor's original intent will become inconsistent with the beneficiaries' needs. This risk remains a consideration in light of the limited case law on the topic and the nebulous language of the Missouri provision. Finally, and perhaps most importantly, the development of the Uniform Trust Code ("UTC")[24] addresses these issues with greater precision and, if adopted in Missouri, would obviate the need for Missouri Revised Statutes Section 456.590.2.

This Law Summary provides a discussion of beneficiaries' right to terminate or modify a trust and speculates on the impact adoption of the Code will have on this area of the law in Missouri. This analysis is particularly important, given Missouri's deviation from the majority approach to trust termination or modification in the past.

II. LEGAL BACKGROUND

Discussion of a beneficiary's power to modify or terminate a trust requires a two-tiered approach.[25] First, traditional doctrine has required the unanimous consent of the beneficiaries.[26] Although this requirement seems innocent enough on its face, complications arise when the trust was designed to benefit individuals who are not yet born (*i.e.*, grandchildren) or who are incompetent.[27]

---

23. South Dakota, Wisconsin, and Rhode Island were among the first states to abolish the rule. Chester, *supra* note 17, at 714 (citing R.I. GEN. LAWS § 34-11-38 (Supp. 2000); S.D. CODIFIED LAWS § 43-5-4 (Michie 1997); WIS. STAT. ANN. § 700.16 (West 1981 & Supp. 2000)); *see also* MO. REV. STAT. § 456.236 (2000). The Missouri provision does not abolish the Rule Against Perpetuities in all circumstances. MO. REV. STAT. § 456.236 (Supp. 2001). Section 456.236.3.1 extinguishes the rule as to trusts created on or after August 28, 2001. MO. REV. STAT. § 456.236.3.1 (Supp. 2001).

24. Several states are expected to adopt the Uniform Trust Code ("UTC") in 2002. David M. English, The 2000 Uniform Trust Code, Address at the FFIEC 2001 ASSET Management Conference (Aug. 7, 2001).

25. Modification of the trust term necessarily includes termination; therefore, the same body of law applies to both principles. *See* RESTATEMENT (THIRD) OF TRUSTS § 63 cmt. g (Tentative Draft No. 3, 2001). The UTC uses the terms synonymously. UTC prefatory note.

26. The *Restatement (Second)* provides:

> (1) Except as stated in Subsection (2), if all of the beneficiaries of a trust consent and none of them is under an incapacity, they can compel the termination of the trust. (2) If the continuance of the trust is necessary to carry out a material purpose of the trust, the beneficiaries cannot compel its termination.

RESTATEMENT (SECOND) OF TRUSTS § 337 (1959).

27. Determining how to protect the interests of beneficiaries who are unborn or

The second requirement, and the one that has presented the most difficulty for courts and petitioners alike, is that the proposed modification may not be achieved without the settlor's consent if doing so would violate the material purpose of the trust.[28] Under the conventional American rule, courts defer to the settlor's intent and preserve the integrity of the trust regardless of the beneficiaries' desires.[29] After nearly a century of adherence to the majority rule, however, Missouri established the opposite approach of giving effect to the beneficiaries' desires, at least to a limited extent.[30]

A. The Development of the American Majority Position

The majority position on the role of a settlor's intent in trust modification has fluctuated between deference and indifference during the past 160 years. Early American jurisprudence was based upon *Saunders v. Vautier*,[31] an English case in which the court allowed the beneficiary access to the corpus four years earlier than the trust instrument authorized.[32] The court dissolved the trust and awarded the balance to the beneficiary, stating that delaying payment of the corpus would have been a logical approach only if the settlor's motivation had been to withhold funds until the beneficiary reached the age of majority.[33] Finding no such motivation and asserting that the interest belonged to the beneficiary alone, the court determined that the restriction on the trust was arbitrary and ruled in favor of the beneficiary.[34] The gravaman of this rule is the alienability of property rights, which is evident in the courts' hesitance to enforce a rule that constrains individuals' ability to dispose of their property in whatever

---

unascertained has presented a continuing problem for the courts. In *Hatch v. Riggs National Bank*, 361 F.2d 559, 565 (D.D.C. 1966), the United States District Court for the District of Columbia remedied this dilemma by appointing a guardian ad litem to represent the secondary beneficiaries' interests. Missouri recently utilized this approach in both *In re Trust of Nitsche*, 46 S.W.2d 682, 683 (Mo. Ct. App. 2001) and *Hamerstrom v. Union Bank of Kansas City, N.A.*, 808 S.W.2d 434, 435 (Mo. Ct. App. 1991). Both Tennessee and California have rejected the appointment of a guardian ad litem in various circumstances. *See* Conservatorship of Hart, 279 Cal. Rptr. 249, 260 (Ct. App. 1991); Alcott v. Union Planter's Nat'l Bank, 686 S.W.2d 79, 83-85 (Tenn. Ct. App. 1984).

28. RESTATEMENT (SECOND) OF TRUSTS § 337(2) (1959); *see also* Claflin v. Claflin, 20 N.E. 454, 455-56 (Mass. 1889).

29. *Claflin*, 20 N.E. at 456.

30. MO. REV. STAT. § 456.590.2 (2000).

31. Cr. & Ph. 240 (1841).

32. *Id.*

33. *Id.*

34. *See* GEORGE G. BOGERT & GEORGE T. BOGERT, LAW OF TRUSTS § 152 (6th ed. 1977).

manner they chose, no matter how imprudent.[35] Additionally, the courts have sought to avoid the effect of the settlor's "dead hand"[36] controlling the disbursement of funds long after death or after adherence to the trust terms becomes impossible or impracticable.[37] Under this approach, if the beneficiaries did not elect to terminate the trust, and the instrument itself did not specify a terminating event, the Rule Against Perpetuities[38] controlled the longevity of the trust.[39]

Saunders epitomized the notion of freely alienable property interests and represented the majority rule in the United States for almost fifty years.[40] In 1889, however, the Massachusetts Supreme Court reached the opposite conclusion in its landmark decision *Claflin v. Claflin*.[41] In *Claflin*, the trust instrument allotted $30,000 to the petitioner, Adelbert Claflin, in three installments of $10,000 payable on his twenty-first, twenty-fifth, and thirtieth birthdays.[42] In a brief-but-exhaustive opinion, the court recognized the favorableness of alienable property interests.[43] Further, the court acknowledged

---

35. English courts unfailingly have held that the settlor cannot make the beneficiaries' interest inalienable by them. *See* Peter J. Wiedenbeck, *Missouri's Repeal of the* Claflin *Doctrine—New View of the Policy Against Perpetuities*, 50 MO. L. REV. 805, 808 (1985) (citing A. SCOTT, THE LAW OF TRUSTS § 337 (3d ed. 1967)). Nevertheless, American law may have played a small part in English jurisprudence regarding the courts' jurisdiction over modification of trust terms. Professor Chester noted that, between 1841 and the late 1950s, English courts were hesitant to exercise statutory authority to "allow wholesale variation" of trust terms. Chester, *supra* note 17, at 711-12. He concluded that "[o]ne might surmise that between the time of *Saunders* and the late 1950s, some of America's 'settlor's intent' jurisprudence had crept into English law." Chester, *supra* note 17, at 711-12.

36. *See* Chester, *supra* note 17, at 714.

37. *See* Chester, *supra* note 17, at 714.

38. *See* Chester, *supra* note 17, at 710.

39. Chester, *supra* note 17, at 720.

40. Missouri's version of the *Saunders* rule is exhibited in *Evans v. Rankin*, 44 S.W.2d 644 (Mo. 1931), in which the court held that the consent of all competent beneficiaries was sufficient to modify a trust.

41. 20 N.E. 454 (Mass. 1889). However, the *Saunders* rule remained in effect in a small minority of states. *See* Spooner v. Dunlap, 180 A. 256 (N.H. 1935); Newlin v. Girard Trust Co., 174 A. 479 (N.J. Super. Ct. Ch. Div. 1934).

42. *Claflin*, 20 N.E. at 455.

43. The *Claflin* court also noted that the absence of a spendthrift provision does not necessarily indicate that the settlor was willing to allow the trust to be dissolved on the beneficiary's whim. The court stated:

> It is true that the plaintiff's interest is alienable by him, and can be taken by his creditors to pay his debts, but it does not follow because the testator has not imposed all possible restrictions that the restrictions which he has

that the interest in question belonged solely to the petitioner.[44] Nonetheless, the settlor's intent prevailed over the beneficiary's desires to terminate the trust prematurely on the grounds that, because no circumstances had arisen that necessitated the dissolution of the trust,[45] there was "no good reason the intent of the settlor should not be carried out."[46] The court concluded that the beneficiary's situation was that which the settlor effectively envisioned, stating that the settlor's "intentions ought to be carried out, unless they contravene some positive rule of law, or are against public policy."[47] Finding that the restrictions set forth in the trust's distributive provisions were not offensive to a positive rule of law or public policy, the court gave effect to the settlor's original intent.[48]

---

imposed should not be carried into effect.

Id. at 456.

The issue of the role of spendthrift provisions in determining the settlor's intent is discussed at greater length *infra* notes 49, 104-09, 131-32, and accompanying text.

44. *Claflin*, 20 N.E. at 455.

45. The court, as opposed to the beneficiaries, may alter the trust's terms where events have occurred that change the circumstances surrounding the trust's creation. RESTATEMENT (SECOND) OF TRUSTS § 167 (1959). The *Restatement* describes the courts' power to alter the administrative provisions of a trust as follows:

> The court will direct or permit the trustee to deviate from a term of the trust if owing to circumstances not known to the settlor and not anticipated by him compliance would defeat or substantially impair the accomplishment of the purposes of the trust, the court may direct or . . . permit the trustee to do acts which are not authorized or are forbidden by the terms of the trust.

RESTATEMENT (SECOND) OF TRUSTS § 167 (1959).

This is commonly known as the changed circumstances doctrine or equitable deviation. RESTATEMENT (SECOND) OF TRUSTS § 167 (1959). The distinction here is that, although courts traditionally could alter the administrative provisions due to changed circumstances, they could not alter the dispositive provisions for the same reason. *See* Thomson v. Union Nat'l Bank in Kansas City, 291 S.W.2d 178, 183 (Mo. 1956) (stating "[t]he power to authorize deviations is exercised, primarily, in matters of administration and does not extend to the extinction or reduction of the interest of the other beneficiaries"). The scope of the courts' power to modify or terminate trust terms is beyond the reach of this Law Summary. However, the UTC, if adopted, would authorize courts to amend administrative or dispositive provisions, or to terminate a trust due to unanticipated circumstances, while being mindful of the settlor's original intent. UTC § 412(a).

46. *Claflin*, 20 N.E. at 456.

47. *Id.*

48. Professor Chester has noted that the test that has been adopted by a majority of American jurisdictions differs in substance from what the *Claflin* court actually held. Chester, *supra* note 17, at 717. The *Claflin* test is frequently articulated as follows: "a trust cannot be terminated prior to the time fixed for termination, even though all of the beneficiaries consent, if termination would be contrary to a material purpose of the

This approach evolved into what has become known as the "material purpose" doctrine, which enumerates the purposes considered to be the essence of a trust. Pursuant to this doctrine, a trust could not be terminated if: (1) it contained a spendthrift provision;[49] (2) the settlor specified the age at which the beneficiary was to receive his or her disbursement; (3) the trust instrument gave the trustee total discretion; or (4) the trust was created for the sole purpose of supporting the beneficiary.[50]

B. Missouri Adopts Claflin

Missouri adopted the *Claflin* approach in *Thomson v. Union National Bank in Kansas City*[51] and applied it to the fullest extent even though there was arguably a "good reason" to deviate from the trust terms.[52] In *Thomson*, the

---

settlor." Chester, *supra* note 17, at 717 (citing DUKEMINIER & JOHANSON, *supra* note 6, at 854); *see also* Hamerstrom v. Commerce Bank of Kan. City, N.A., 808 S.W.2d 434, 435 (Mo. Ct. App. 1991).

The *Restatement (Second)* does not explicitly describe what is meant by material purpose. The *Restatement (Third)*, however, contains the following language:

> Material purposes are not readily to be inferred. A finding of such a purpose generally requires some showing of a particular concern or objective on the part of the settlor, such as concern with regard to a beneficiary's management skills, judgment, or level of maturity. Thus, a court may look for some circumstantial or other evidence indicating that the trust arrangement represented to the settlor more than a method of allocating the benefits of property among multiple intended beneficiaries, or a means of offering to the beneficiaries (but not imposing on them) a particular advantage. Sometimes, of course, the very nature or design of a trust suggests its protective nature or some other material purpose.

RESTATEMENT (THIRD) OF TRUSTS § 65 cmt. d (Tentative Draft No. 3, 2001).

49. Simply stated, a spendthrift trust is one in which the trust property is not assignable, attachable, or otherwise alienable to the beneficiary's creditors. *See* BLACK'S LAW DICTIONARY 1518 (7th ed. 1999); *see also* RESTATEMENT (SECOND) OF TRUSTS § 337 cmt. l (1959). The *Restatement (Second)* states:

> If by the terms of the trust or by statute the interest of one or more of the beneficiaries is made alienable by him . . . the trust will not be terminated while such alienable interest still exists, although all of the beneficiaries desire to terminate it or one beneficiary acquires the whole beneficial interest and desires to terminate it.

RESTATEMENT (SECOND) OF TRUSTS § 337 cmt. l (1959).

50. *See* Chester, *supra* note 17, at 717.

51. 291 S.W.2d 178 (Mo. 1956).

52. *Id.* at 182. Although changed circumstances is a doctrine in and of itself that a court may employ to alter the administrative provisions of a trust, a change in circumstances is frequently the basis for the beneficiaries' petition to modify the

settlor established a trust in 1913 for the primary purpose of providing income to his wife after his death.[53] The beneficiaries argued that the settlor did not anticipate economic changes that resulted in the depreciation[54] of the bonds held in trust.[55] The court, in rejecting the beneficiaries' request, seemingly reduced the decision to modify or terminate to a matter of degree. It stated that the "settlor's primary purposes have not been so defeated or *so substantially impaired* by changed economic conditions that the trustee should no longer be required to strictly conform to the directions of the trust and the settlor's explicit desires."[56] Here, the beneficiaries presented a meritorious argument for termination or modification of the archaic trust instrument, which the court, nevertheless, rejected based upon an expansive interpretation of the material purpose doctrine.[57]

Although, as a general principle, English law traditionally has deferred to a beneficiary's desire, confusion about a statutory provision governing the court's jurisdiction over trust investments led to a disjointed body of case law in the 1940s and 1950s.[58] The need for uniformity contributed to the passage of the Variation of Trusts Act in 1958.[59] The Act's language conferred upon the courts

---

dispositive provisions or to terminate the trust. *See* RESTATEMENT (SECOND) OF TRUSTS §§ 166-67 (1959). Hence, the changed circumstances language often appears in cases where the beneficiaries have petitioned a court for modification of dispositive provisions due to a change in life circumstances of one or all of the beneficiaries. The question then before the court is whether alteration or termination is consistent with the settlor's material purpose. *See* RESTATEMENT (SECOND) OF TRUSTS § 337 (1959).

53. *Thomson*, 291 S.W.2d at 183.

54. The settlor funded the trust with $60,000 at its inception in 1913 with the instruction that the trust income be paid to his wife with equal parts of the corpus divided among his children when they reached the age of forty. *Id.* at 179. The trust income varied from $3,600 to $4,800 annually until about 1949 when the income was $1,332. *Id.* at 180. The income was similarly low in 1951 and 1952. *Id.* Mrs. Thomson and her children (each of whom was a beneficiary) brought the instant action in 1953. *Id.* at 180.

55. *Id.* at 183.

56. *Id.* at 184 (emphasis added).

57. The distinctions among the facts in the *Claflin*, *Saunders*, and *Thomson* decisions are worthy of mention. The beneficiaries in *Claflin* and *Saunders* were young men who asserted that the wealth due them was being arbitrarily withheld. Claflin v. Claflin, 20 N.E. 454, 456 (Mass. 1889); Saunders v. Vautier, Cr. & Ph. 240 (1841). *Thomson*'s plaintiff, however, was a widow whose source of income was not entirely stable. *Thomson*, 291 S.W.2d at 180. Although the thrust of the *Claflin* doctrine is to honor the settlor's intent, such was arguably not the result in *Thomson*.

58. *See* Chester, *supra* note 17, at 712.

59. The Variation of Trusts Act reads, in pertinent part:

(1) Where property, whether real or personal, is held on trusts arising, whether before or after the passing of this Act, under any will, settlement or other

broad authority to terminate a trust or deviate from its terms, including jurisdiction over both distributive and administrative provisions.[60] Additionally, the statute authorized the courts to act on behalf of minor, incompetent, and unascertained beneficiaries.[61]

C. Missouri Follows England's Lead

In 1983, Missouri deviated from the majority American position and adopted the English approach to trust modification with the enactment of

---

disposition, the court *may if it thinks fit* by order approve on behalf of—

(a) any person having, directly or indirectly, an interest, whether vested or contingent, under the trusts who by reason of infancy or other incapacity is incapable of assenting, or

(b) any person (whether ascertained or not) who *may become entitled*, directly or indirectly, to an interest under the trusts as being at a future date or on the happening of a future event a person of any specified description or a member of any specified class of persons, so however that this paragraph shall not include any person who would be of that description, or a member of that class, as the case may be, if the said date had fallen or the said event had happened at the date of the application of the court, or

(c) any person unborn, or

(d) any person in respect of any discretionary interest of his under protective trusts where the interest of the principal beneficiary has not failed or determined[,] any arrangement (by whomsoever proposed, and whether or not there is any other person beneficially interested who is capable of assenting thereto) varying or revoking all or any of the trusts, or enlarging the powers of the trustees of managing or administering any of the property subject to the trusts:

Provided that except by virtue of paragraph (d) of this subsection the court *shall not approve an arrangement on behalf of any person unless the carrying out thereof would be for the benefit of that person.*

Variation of Trusts Act, 6 & 7 Eliz. 2, c. 53, § 1(1) (1958) (Eng.) (emphasis added).

Although the language of the Missouri statute is taken directly from the English Variation of Trusts Act, its scope is arguably much more narrow. In subsection (b), the English Act requires a finding of a benefit to any person who may be directly or indirectly entitled to distribution from the trust. Variation of Trusts Act, 6 & 7 Eliz. 2, c. 53, § 1(1) (1958) (Eng.). The Missouri Court of Appeals for the Western District of Missouri, however, has limited the statutory language to mean that a court must find a benefit only for those parties who are expressly mentioned in the trust instrument. *See infra* notes 70-83 and accompanying text.

60. Variation of Trusts Act, 6 & 7 Eliz. 2, c. 53, § 1(1) (1958) (Eng.); *see also* Chester, *supra* note 17, at 713; *supra* note 52.

61. Variation of Trusts Act, 6 & 7 Eliz. 2, c. 53, § 1(1) (1958) (Eng.).

Missouri Revised Statutes Section 456.590.2.[62] Unlike the long-standing rule expressed in *Claflin*,[63] consideration of the settlor's intent is absent in the Missouri provision, which is based, in significant part, upon the English Variation of Trusts Act.[64] The Missouri statute, however, expanded the role of the courts beyond what the English Variation of Trusts Act authorized. Rather than merely authorizing tribunals to act on behalf of beneficiaries, Missouri courts must make a finding that deviation from the trust terms will *benefit* the disabled, minor, unborn, or unascertained beneficiaries, giving the provision the effect of making the court an impromptu guardian ad litem.[65] Moreover, the statute fails to address which individuals fall within the scope of the term "beneficiary" as used in Section 456.590.2,[66] and it does not distinguish between economic and non-pecuniary benefits.[67] Despite the imprecise nature of the

---

62. MO. REV. STAT. § 456.590.2 (2000).

63. The Missouri Court of Appeals for the Western District of Missouri stated that Missouri Revised Statutes Section 456.590.2 modified the *Claflin* rule in that:

> [t]he statute provides a mechanism for "adult beneficiaries who are not disabled," to vary, extend or eliminate a trust under circumstances where the settlor's purpose is not considered. However, deviation is precluded when certain classifications of protected beneficiaries exist and a court has not found that those variations desired by the qualified adult beneficiaries would benefit the protected beneficiaries.

Hamerstrom v. Commerce Bank of Kan. City, N.A., 808 S.W.2d 434, 436 (Mo. Ct. App. 1991).

64. *See* Wiedenbeck, *supra* note 35, at 812-15.

65. The language, "the court may, upon finding that such variation will benefit the disabled, minor, unborn and unascertained beneficiaries," presents an interpretive dilemma. MO. REV. STAT. § 456.590.2 (2000). To date, the courts in the two cases interpreting it have appointed guardians ad litem to represent the interests of the unborn and unascertained beneficiaries without much fanfare. *See In re* Trust of Nitsche, 46 S.W.3d 682, 683 (Mo. Ct. App. 2001); *Hamerstrom*, 808 S.W.2d at 436. This is arguably an appropriate measure for the court, but it may not be precisely what the statute envisioned. Strictly read, the statute requires only a *finding* of a benefit. MO. REV. STAT. § 456.590.2 (2000). Evidently, however, Missouri courts have determined that an appropriate means to issue a finding of a benefit is to obtain a guardian's recommendations. *Hamerstrom*, 808 S.W.2d at 436; *see also Nitsche*, 46 S.W.3d at 683.

66. Wiedenbeck, *supra* note 35, at 813.

67. Wiedenbeck, *supra* note 35, at 813.

provision,[68] there has been very little litigation concerning the statute; in fact, only two Missouri cases have interpreted it.[69]

One of these cases, *Hamerstrom v. Commerce Bank of Kansas City, N.A.*,[70] arose in much the same way as *Thomson*; however, *Hamerstrom* was a case of first impression under the statute.[71] Upon his death in 1966, the settlor established a testamentary trust for the benefit of Elizabeth Hamerstrom.[72] Under the trust's terms, Elizabeth was to receive $150 monthly allowance until the corpus was exhausted or until her death.[73] Upon her death, the trust was to be terminated, and the corpus was to be distributed to her husband, should he survive, or to their two sons in equal shares should their father predecease their mother, Elizabeth.[74] The instrument made no mention who would receive the corpus if any of the contingent beneficiaries predeceased Elizabeth, the primary beneficiary.[75]

Asserting that the trifecta of inflation, retirement, and increased health care costs changed her circumstances significantly enough to warrant deviation from trust terms, Elizabeth, with the consent of her sons and husband, petitioned the

---

68. Professor Wiedenbeck has illuminated three potential difficulties in the interpretation of Missouri Revised Statutes Section 456.590.2. Wiedenbeck, *supra* note 35, at 813. First, the statute does not address whether the court has jurisdiction to order a deviation where there are no disabled, minor, unborn, or unascertained beneficiaries, and where the adult beneficiaries who are not disabled consent. Wiedenbeck, *supra* note 35, at 813. Second, the statute does not address how closely the additional benefit must be to the settlor's original purpose. Wiedenbeck, *supra* note 35, at 813. Finally, the statute does not address the extent to which the court is to consider the settlor's material purpose. Wiedenbeck, *supra* note 35, at 813. Although Missouri courts have yet to address these inquiries, the *Hamerstrom* case illuminated other problematic areas of the interpretation of the statute. For instance, the courts effectively limited the class of beneficiaries to "those persons, including unborn and unascertained issue, individually named, or who are included in a named class, identified by the settlor in the testamentary trust and for whom the settlor expressed an intent to make [the] provision." *Hamerstrom*, 808 S.W.2d at 438. Interpreting the statute in a way that would require the court to find a benefit for unnamed beneficiaries would give the statute no substantive effect.

69. *See infra* note 83 and accompanying text.

70. 808 S.W.2d 434 (Mo. Ct. App. 1991). *See generally* Becky Owenson Kilpatrick, *Missouri Takes a Stand: The Death of the Dead Hand in the Control of Trusts*, 57 MO. L. REV. 1003 (1992).

71. *Hamerstrom*, 808 S.W.2d at 434.

72. *Id.* at 435.

73. *Id.* When Mrs. Hamerstrom filed the petition for deviation, the trust's value was $425,000 with an annual income of approximately $26,000. *Id.*

74. *Id.*

75. *Id.* at 437.

court for a greater allowance.[76] In finding that the trust could be varied under Section 456.590.2,[77] the court announced that an interpretation of the provision mandated that the term "beneficiary" be given its "plain and ordinary meaning."[78] The language did not require the court to extend trust benefits to individuals not named in the instrument. As there were no unnamed or unascertained beneficiaries in the instant case, the requirements for modification were satisfied because all of the named beneficiaries consented.[79]

Hamerstrom marked the initial statutorily-mandated departure from the material purpose doctrine in Missouri. Accordingly, the courts began placing more weight on the acquisition of beneficiaries' consent and the protection of contingent beneficiaries.[80] They gave no deference whatsoever to the settlor's purpose.[81] It would seem, then, that the statutory provision entirely did away with the *Claflin* doctrine, the thrust of which is to give effect to the settlor's material purpose. Conversely, the thrust of the Missouri statute is, where necessary, to protect unrepresented classes of contingent beneficiaries.[82] Given that Missouri courts have examined the statute in only two cases,[83] there has not yet been an opportunity to illuminate its full meaning, and there may never be, particularly if Missouri adopts the UTC.

III. RECENT DEVELOPMENTS

The increased use of trusts for estate planning and wealth management purposes has inspired a movement toward uniformity in the law governing

---

76. *Id.* at 435. Mrs. Hamerstrom requested a monthly allowance of $2,000. *Id.*

77. Arguably, the facts in *Hamerstrom* demonstrate the provision's finite application. If read strictly, the court would have no need to apply the statute in a situation where the heirs or issue of beneficiaries are not mentioned in the instrument itself. Absent such a situation, the court, as in the present case, merely deferred to the traditional requirements of the unanimous consent of the competent, adult beneficiaries, although it cited to Section 456.590.2 as its justification. *See id.* at 438; RESTATEMENT (SECOND) OF TRUSTS § 337 (1) (1959).

78. *Hamerstrom*, 808 S.W.2d at 437.

79. *Id.* at 438.

80. *See generally* Hamerstrom v. Commerce Bank of Kan. City, N.A., 808 S.W.2d 434 (Mo. Ct. App. 1991).

81. Arguably, under Section 456.590.2, securing a benefit for the unborn or unascertained beneficiaries would constitute the settlor's material purpose.

82. MO. REV. STAT. § 456.590.2 (2000).

83. In addition to *Hamerstrom*, the Missouri Court of Appeals for the Southern District of Missouri recently applied Section 456.590.2 in *In re Trust of Nitsche.* However, this decision was very limited and made no contribution to the jurisprudence. *See In re* Trust of Nitsche, 46 S.W.3d 682 (Mo. Ct. App. 2001).

trusts.[84] This increased use, coupled with the fact that trust law in many states is "thin" at best,[85] presents the potential for copious litigation and more fragmented policies.[86] Previously, attorneys and courts have drawn guidance from the *Restatement*, case law, and the voluminous writings of Scott and Bogert.[87] While the treatises, restatements, and jurisprudence are not without value, relying on these sources requires consulting a multitude of cites and, even then, leaves many important issues unaddressed.[88] Furthermore, the existing uniform laws that relate to trusts, including the Uniform Probate Code, the Uniform Prudent Investor Act and the Uniform Trusts Act, create more gaps in the law than they fill.[89] Missouri differs in that it has a statute that clearly liberalizes the law on trust modification and termination, but the extent of the liberalization remains unclear.[90] This lack of uniformity and completeness in the law diminishes trusts' value as flexible and practical estate management instruments.[91] In 1994, in order to remedy this problem, the National Conference of Commissioners on Uniform State Laws appointed a drafting committee for the UTC.[92] After six years of discussion, the Committee presented the completed UTC in 2000 with the goal of providing the states "with precise, comprehensive, and easily accessible guidance on trust law questions."[93]

---

84. UTC prefatory note.

85. UTC prefatory note. Although collectively the states' jurisprudence is vague and inconsistent, several states, including California, Georgia, Indiana, Texas, and Washington, have developed comprehensive trust statutes. UTC prefatory note.

86. *See* UTC prefatory note.

87. *See* Chester, *supra* note 17, at 725; *see also* David M. English, *The Uniform Trust Code (2000): Significant Provisions and Policy Issues*, 62 MO. L. REV. 143 (2002).

88. *See* Chester, *supra* note 17, at 725.

89. UTC prefatory note (describing the uniform laws dealing with trusts as "fragmentary").

90. *See supra* notes 63-66.

91. *See supra* note 5; *see also* 1 AUSTIN W. SCOTT & WILLIAM FRANKLIN FRATCHER, THE LAW OF TRUSTS 4 (4th ed. 1991) ("The purposes for which trusts can be created are as unlimited as the imagination of lawyers.").

92. UTC prefatory note.

93. UTC prefatory note.

A. Drafting Influences

Statutes from various states influenced the preparation of the UTC;[94] however, the California Probate Code,[95] which has separate provisions for court alterations due to changed circumstances and for termination and modification under the material purpose doctrine was most influential.[96] The material purpose

---

94. UTC prefatory note.

95. California Probate Code Section 15409 deals with modification or termination due to changed circumstances. It states:

> (a) On petition by a trustee or beneficiary, the court may modify the administrative or dispositive provisions of the trust or terminate the trust if, owing to circumstances not known to the settlor and not anticipated by the settlor, the continuation of the trust under its terms would defeat or substantially impair the accomplishment of the purposes of the trust. In this case, if necessary to carry out the purposes of the trust, the court may order the trustees to do acts that are not authorized or are forbidden by the trust instrument. (b) The court shall consider a trust provision restraining transfer of the beneficiary's interest as a factor in making its decision whether to modify or terminate the trust, but the court is not precluded from exercising its discretion to modify or terminate the trust solely because of a restraint on transfer.

CAL. PROB. CODE § 15409 (West 1991).

California Probate Code Section 15403 deals with the beneficiaries' right to modify or terminate trust terms. It states:

> (a) Except as provided in subdivision (b), if all beneficiaries of an irrevocable trust consent, they may compel modification or termination of the trust upon petition of the court. (b) If the continuation of the trust is necessary to carry out the material purpose of the trust, the trust cannot be modified or terminated unless the court, in its discretion, determines that the reason for doing so under the circumstances outweighs the interest in accomplishing a material purpose of the trust. Under this section, the court does not have discretion to permit termination of a trust that is subject to a valid restraint of transfer of the beneficiary's interest as provided in Chapter 2 (commencing with section 15300).

CAL. PROB. CODE § 15403 (West 1991).

Note that Section 15403 essentially describes a balancing test between the material purpose of the trust and the circumstances from which the petition to modify arose. The UTC contains no such balanci..g test. *See* Chester, *supra* note 17, at 704. The *Restatement* also authorizes a balancing test, stating that, where termination would be inconsistent with the trust's material purpose, modification may be compelled upon the court's finding that the reason for termination outweighs the settlor's material purpose. RESTATEMENT (THIRD) OF TRUSTS § 65(2) (Tentative Draft No. 3, 2001). Note, however, that the balancing does not occur unless the settlor has died. RESTATEMENT (THIRD) OF TRUSTS § 65(2) cmt. d (Tentative Draft No. 3, 2001).

96. CAL. PROB. CODE § 15403 (West 1991).

provision had the most influence on the UTC.[97] In addition to the statutory influences, the drafters based the UTC on the *Restatement (Second)* and *Restatement (Third) of Trusts*,[98] and it also incorporated various provisions of existing uniform laws on trusts.[99] Specifically, the provisions of Article 4 of the UTC,[100] which govern trust modification and termination, were drafted to augment flexibility in this area.[101]

The California Probate Code's influence is apparent upon the drafting of Article 4.[102] Although the UTC does not require explicit counterbalancing between the needs of the beneficiaries in light of changed circumstances and the intent of the settlor,[103] harmonizing these two interests was the drafters' primary goal.[104] The prefatory comments to the UTC indicate that the "overall objective of the these sections is to enhance flexibility consistent with the principle that preserving the settlor's intent is paramount."[105] This deference is evinced by the language of Section 411, which limits termination of a trust to circumstances where the trust is no longer necessary to achieve the settlor's material purpose or is not inconsistent with that material purpose.[106] This language is significant,

---

97. David M. English, *Is There a Uniform Trust Act in Your Future?*, PROB. & PROP., Jan. 2000, at 25.

98. Although the *Restatement (Second) of Trusts* had a sizable role in the progression of the common law upon which the UTC is based, the drafters endeavored to construct the UTC in such a way that it complements the *Restatement (Third) of Trusts*. *See* UTC prefatory note.

99. UTC prefatory note.

100. In addition to governing trust modification and termination, Article 4 establishes the requirements concerning trust creation. UTC prefatory note. These elements are based upon the traditional doctrine outlined in the *Restatement (Second)* Section 23 and *Restatement (Third)* Section 13. UTC prefatory note. Furthermore, Article 4 delineates noncharitable, charitable, and honorary trusts. UTC prefatory note.

101. UTC prefatory note.

102. *See* CAL. PROB. CODE § 15409(a) (West 1991).

103. *See* CAL. PROB. CODE § 15409(a) (West 1991).

104. UTC prefatory note.

105. UTC prefatory note.

106. Section 411(b) states in its entirety:

> A noncharitable irrevocable trust may be terminated upon consent of all the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

UTC § 411(b); *cf.* RESTATEMENT (THIRD) OF TRUSTS § 65 (Tentative Draft No. 3, 2001).

particularly for Missouri practitioners, because it "carries forward" the rule established in *Claflin* more than a century ago.[107]

In addition to codifying the *Claflin* doctrine,[108] Section 411 is innovative in that it resolves the ambiguity surrounding spendthrift provisions,[109] which have long been debated with regard to whether the settlor's desire to shield the trust funds from the reach of creditors constitutes a material purpose.[110] If widely adopted, the UTC would clarify this ambiguity. Subsection (c) of Section 411 unequivocally states that a spendthrift provision will not be presumed to be a material purpose of the trust.[111] This result, though apparently contrary to the generally accepted authority on the subject,[112] is a consequence of the nearly universal practice of incorporating a spendthrift provision without consideration of the settlor's actual intent.[113] Otherwise, the use of boilerplate language substantially would limit the beneficiaries' ability to terminate or modify, even though the settlor had no such purpose.

IV. DISCUSSION

The design of the UTC provides for a more sophisticated analysis of the settlor's purpose in creating the trust[114] by allowing modification where the change is "not inconsistent with a material purpose of the trust"[115] and allowing termination where the court "concludes that continuance of the trust is not necessary to achieve any material purpose of the trust."[116] Additionally, it

---

107. UTC § 411(a) cmt.

108. UTC § 411(b) cmt.

109. UTC § 411(c).

110. ANDERSEN, *supra* note 2, § 13, at 114-19.

111. UTC § 411(c).

112. *See* UTC § 411(c) cmt. (citing GEORGE G. BOGERT & GEORGE T. BOGERT, THE LAW OF TRUSTS AND TRUSTEES § 1008 (rev. 2d ed. 1992)); 4 AUSTIN W. SCOTT & WILLIAM FRANKLIN FRATCHER, THE LAW OF TRUSTS § 337 (4th ed. 1989); *see also* Estate of Harbaugh v. Harbaugh, 646 P.2d 489, 502 (Kan. 1982); Heritage Bank-North v. Hunterdon Med. Center, 395 A.2d 552, 554 (N.J. 1978); Germann v. N.Y. Life Ins. Co., 331 S.E.2d 385, 387 (S.C. Ct. App. 1985).

113. UTC § 411(c) cmt.; *see also* RESTATEMENT (THIRD) OF TRUSTS § 65 cmt. e (Tentative Draft No. 3, 2001) (stating that a spendthrift clause "may be included as a routine or incidental provision of a trust (unimportant or even unknown to the settlor) as a part of a trust established for tax purposes, merely to provide successive enjoyment or for other reasons not inconsistent with allowing premature termination upon application of all the beneficiaries").

114. UTC § 411(c) cmt.

115. UTC § 411(b).

116. UTC § 411(b).

protects the interests of a deceased settlor, while allowing deviations to be made within reason to ensure that the passage of time does not render the trust distributions nominal.[117] This phenomenon occurred in *Thomson*,[118] in which the Missouri Supreme Court determined that the monthly disbursements, though a fraction of what the beneficiary needed for maintenance, were sufficient because they substantially comported with the settlor's intent.[119] In cases such as *Thomson*, the UTC's requirement that the purpose for which deviation is requested be "not inconsistent" with the original purpose of the trust certainly would allow for greater disbursements where the beneficiary has become infirm, has retired, or where inflation has rendered the trust income nominal.[120] The UTC, if adopted, ideally would lessen the likelihood that decisions to withhold disbursements would be rendered arbitrarily based upon a strict interpretation of the word "intent."[121]

In light of these recent developments, inquiry into whether the UTC would supersede the Missouri statute is warranted. The UTC unequivocally adopts the *Claflin* doctrine,[122] whereas Missouri Revised Statutes Section 456.590.2 superceded *Claflin* to the extent that the statutory language does not explicitly inquire into the settlor's intent.[123] Otherwise, the statute fused the *Restatement* requirement of unanimous beneficiary consent with the English Variation of Trusts Act requirement of a benefit to unborn or unascertained beneficiaries.[124] A liberal reading of the Missouri statute, coupled with the appellate courts' interpretation of the statute thus far, demonstrates deference to the settlor's intent. Clearly, if the settlor named contingent remaindermen, he or she intended for them to benefit. If the settlor had no such intent, no contingent beneficiaries would have been named. The Missouri statute merely requires that the proposed change will provide some benefit to the contingent remaindermen once the modification is made.[125] Hence, the Missouri statute and the UTC are not inherently incongruous. The UTC allows deviation where the beneficiaries

---

117. *See generally* UTC § 411 and accompanying comments.

118. *See supra* notes 53-57 and accompanying text.

119. *See supra* notes 53-57 and accompanying text.

120. *See* UTC § 411 and accompanying comments.

121. Although the UTC has the ideal effect of increasing uniformity and honoring the settlor's true intent, beneficiaries are saddled with a substantial restraint. The UTC provisions governing modification and termination are purely discretionary, and, therefore, should the trial court produce a ruling adverse to the beneficiaries, the decision would be difficult to overturn on appeal.

122. UTC § 411(a) cmt.

123. *See* MO. REV. STAT. § 456.590.2 (2000).

124. *See supra* notes 57-61 and accompanying text.

125. MO. REV. STAT. § 456.590.2 (2000).

consent *and* the settlor's intent will not be dishonored;[126] the statute permits deviation where all beneficiaries consent *and* the proposed variation would benefit the contingent remaindermen.[127] Because the settlor's intent was not to abandon the interests of the contingent remaindermen, finding a benefit for them is consistent with the settlor's interests. Hence, though it differs from the Missouri statute as to modification of trust terms, the UTC does not necessarily offend the relevant provisions of Missouri law. Similarly, the UTC, though based upon the California Probate Code and the *Restatement (Third) of Trusts*, differs somewhat from these drafting models.

The UTC differs from the California Probate Code and the *Restatement (Third) of Trusts* in that both explicitly require a counterbalancing of the settlor's and beneficiaries' desires.[128] The UTC requires no such test.[129] The *Restatement* envisions a modification doctrine that would allow deviation where there is a compelling desire that is outside the parameters of the settlor's intent. Again, the UTC protects the settlor more so than does the *Restatement* in that the UTC defers to the beneficiaries only to the extent that the modification will effectuate the settlor's intent.[130]

The UTC, while substantially deferring to the settlor's intent, appears to further dead hand control of the trust property in terms of an express material purpose; however, it liberalizes the material purpose doctrine with regard to spendthrift provisions.[131] This is an interesting choice by the drafters because the majority of the UTC provisions codify traditional doctrine while the spendthrift provision is totally inconsistent with traditional doctrine.[132] Again, this decision was meant to protect the settlor's interest, but it ultimately benefits the beneficiaries. Spendthrift clauses are frequently added to a trust document as a matter of course, and, where this is the case, it is arguable that restricting transfer of the interest was not the settlor's intent. To ensure that the court effectuates the settlor's intent, the trustee may offer extrinsic evidence that the spendthrift provision was, in fact, a material purpose of the settlor.

---

126. UTC prefatory note, § 411(b).

127. MO. REV. STAT. § 456.590.3 (2000).

128. *See* CAL. PROB. CODE § 15409(a) (West 1991); *supra* note 95 and accompanying text.

129. *See* Chester, *supra* note 17, at 705.

130. UTC prefatory note, § 411(b).

131. *See supra* notes 108-13 and accompanying text.

132. *See supra* notes 108-13 and accompanying text.

V. CONCLUSION

The cycle began in Missouri in 1956 when the Missouri Supreme Court adopted the *Claflin* rule in *Thomson*.[133] For twenty-seven years, this was the law in Missouri, as it was in a majority of states. In 1983, however, the Missouri General Assembly mandated the consideration of the needs of all classes of beneficiaries with the adoption of Missouri Revised Statutes Section 456.590.2, although the statute had no noticeable effect until *Hamerstrom*.

If the UTC is adopted, Missouri's law of trust modification will vacillate back to where it began more than a century ago. In the interim, the courts and legislature have had difficulty striking the appropriate balance between the settlor's intent in creating the trust and the disfavored practice of restraining an individual's freedom to alienate his or her property. The UTC has struck a delicate balance that corrects the flaws in the traditional doctrines. While allowing courts to deviate from trust provisions only with the beneficiaries' consent, deviation is allowed only to the extent that it is not inconsistent with the trust's material purpose. If the UTC is adopted in Missouri, this provision would preserve the purpose the settlor envisioned for the trust while allowing the flexibility that was lost when the courts—fearing dead hand control—overcompensated by affording the beneficiaries the power to undo the settlor's purpose. This result is not only logical, but it is also fair to both settlors and beneficiaries.

JULIA C. WALKER

133. Thomson v. Union Nat'l Bank in Kansas City, 291 S.W.2d 178 (Mo. 1956).