

# Kelley Drye Wins Major Victory As Court Denies Motion To Vacate

January 27, 2008

Kelley Drye successfully represented JPMorgan Chase Bank, N.A., as trustee, in opposition to motions to vacate decrees settling the trustee's accounts of proceedings for seven trusts dating back to 1927. In the *Matter of Elizabeth de Sanchez*, the beneficiaries sought to open accounting decrees dated 1953, 1974 and 1975 on the grounds that the court issuing the decrees lacked jurisdiction over the beneficiaries and that JPMorgan breached its fiduciary duties and engaged in self-dealing and fraud. In an accounting proceeding, a trustee formally presents all of the transactions of a trust to the court and to the beneficiaries for their approval. Opening the decrees would have subjected JPMorgan's long-settled investment decisions to new scrutiny.

On Jan. 7, 2008, in a decision that largely tracked the briefs submitted by Kelley Drye, the New York County Supreme Court denied the beneficiaries' motions to vacate. The court held that it had jurisdiction over the beneficiaries in the prior accounting proceedings, and that the beneficiaries failed to rebut the presumption of proper service. The court confirmed that the interests of two of the beneficiaries were "virtually represented" by their mother even though they were not parties to the 1974 proceeding.

The court agreed with Kelley Drye's argument that the time had long passed for the beneficiaries to allege fraud in JPMorgan's handling of the trusts. Moreover, the beneficiaries failed to persuade the court that JPMorgan obtained the accounting decrees by fraud. The court agreed with Kelley Drye that, in 1953, 1974, and 1975, the accountings made full disclosure and the beneficiaries were given the opportunity to contest the accountings and chose not to.

The court's decision was published in the *New York Law Journal* on Feb. 1, 2008. Partner Robert E. Crotty handled this matter.