Rock Solid in New Hampshire

The Granite State's Specialized Trust Court, a True Citizens' Legislature, and Its Long Tradition of Judicial Restraint Make for an Ideal Trust Venue

By Dennis R. Delaney*

New Hampshire has long been known as the "Live Free or Die" state. First used during the French Revolution, this phrase is among the most widely known state mottos. New Hampshire's most celebrated Revolutionary War

soldier, General John Stark, made the slogan famous when he used it in a toast given in 1809. Perhaps he knew of Patrick Henry's similar sentiment expressed in 1775 by exclaiming "Give me liberty or give me death!"

Regardless of its origin, the phrase "Live Free or Die" continues to capture the essence of a philosophy held dear in New Hampshire, a philosophy that values individualism and small government over bureaucracy, thrift over excess, and modesty over flash.

In fact, it is New Hampshire's discreet style and reserved culture that account for its relatively low visibility among the states considered to be premier venues in which to site trusts.[i] In one sense it's ironic because discretion and a low profile are exactly what trust clients seek.

The Citizens' Legislature

Given its libertarian-leaning foundation, it is not surprising that New Hampshire has always been regarded as a pro-business, low-tax state that values privacy rights.[ii] It has earned that reputation well. Its legislature is referred to as the "Citizens' Legislature" because there are no professional politicians, but rather people from a wide variety of occupations who are paid $200 per term, with no retirement benefits.

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Perhaps it is not surprising, then, that New Hampshire has no income tax, no sales tax, no capital gains tax, no gift tax, and no estate tax.

Nor is it surprising that its government has a reputation for efficiency and low corruption or that the percentage of New Hampshire residents who work for state and local government as compared to the private sector is among the lowest in the nation.[iii]

New Hampshire's legislature also has a reputation as one of the most open and accessible in the country, earning a grade of "A" from the Open States Legislative Data Report Card based on how reliable, complete and accessible its data is to the general public.[iv]

By contrast, of the other premier trust jurisdictions, Delaware, South Dakota and Tennessee each received a grade of "C"; Alaska and Nevada each received a "B."

What may be more noteworthy is the legislature's dedication to creating a premier trust jurisdiction regardless of the politics of the moment. Since New Hampshire adopted the Uniform Trust Code in 2004, it has passed nine separate laws improving its statutory framework for trusts.

Only one of those statutes was enacted by a Republican-controlled government. Six of the nine were enacted when control was split between Democrats and Republicans, and the remaining two were passed when Democrats controlled all three branches. Significantly, those last two statutes included very substantial updates to decanting, self-settled spendthrift trusts, and expansion of virtual representation.

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These statistics clearly demonstrate a legislature that works well regardless of political shifts and a bi-partisan commitment to maintaining the state's well earned status as a premier trust jurisdiction.

A Dedicated Trust Court

Many of the states that are considered premier trust jurisdictions have legislatures that are cooperative, meaning they have proven their support of the state's trust industry by enacting multiple favorable statutes.

The judiciary, however, is where the rubber will meet the road, because that is where a judge must enforce the statutes, often in a case with a set of "bad facts" that pressure the judge for a judicial modification of the statute. And most of the modern trust features now available in the premier states are untested in the courts, including Delaware.[vi]

Thus it is important to take a close look at a

state's judiciary to gain a level of comfort that it will decide cases in a consistent, predictable manner regardless of politics or public opinion.

New Hampshire is the only state with a separate court dedicated entirely to disputes involving trusts. In most states, the probate court handles trusts matters. The overwhelming majority of cases in probate courts involve family law, including divorce and adoption.

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Therefore probate court judges are not necessarily well equipped to handle complex cases involving cutting edge trusts. And even if a state has a high caliber supreme court that is likely to correct any mistakes made by probate court judges, the costs and delay of appealing all the way to the supreme court can be disastrous.

Interestingly, of the other states considered premier trust jurisdictions, three do not even have separate probate courts (never mind a court devoted exclusively to trusts). South Dakota has its Circuit Court, Nevada its District Court, and Alaska has its Superior Court. All of them lump trust disputes in with not only divorce but also nearly every other type of civil dispute, and in the case of Alaska, even some criminal cases.

New Hampshire's trust court focuses exclusively on complex trust litigation. Its presiding judge has over 30 years of experience on the bench.

In Delaware, the Court of Chancery is known primarily for its work on corporate law but it actually has an extraordinarily heavy work load involving subject matter areas as diverse as real estate, commercial and contractual matters, title issues, divorce, adoption and finally, trusts and estates.[vii]

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A Respectful Judiciary

Ascertaining a state court's level of respect for the role of the legislature is another key in achieving a comfort level with that state as a trust jurisdiction, especially given the relative lack of established caselaw in any state which specifically involves the newer trust features under modern trust statutes.

New Hampshire's judiciary has a long tradition of restraint and discretion, favoring a "plain read" of a statute or contract and carefully avoiding legislating from the bench. In the trust context, this translates to deference to the settlor's intent as expressed in the trust instrument. It also translates to a deep-seated belief in the division between the legislature as the maker of laws, and the judiciary as the interpreter of laws.

As evidence of this long history, consider the following:

In 1942, the New Hampshire Supreme Court stated: "It is no part of the judicial function to add to a statute by interpretation, provisions not expressed therein."[viii]

In 1957, the court stated "we will not redraft the [New Hampshire] constitution in an attempt to make it conform to an intention not fairly expressed in it," as well as "[it is the] duty of the judiciary to interpret the law, not make it."[ix]

In 1992, it said "we regard it as a well settled and unquestioned rule of construction that the language used by the legislature, in statutes enacted by them . . . is to be always understood and explained *in that sense in which it was used at the time when . . . the laws were adopted.*"[x]

And in 2005 the court declined to read into the state's constitution a judicial right to look into whether the state's legislature violated its procedural rules.[xi] Here there was an allegation that certain informal deliberations among legislators held in private violated the public's right of access and right to know.

Demonstrating its respect for separation of powers, the court stated "[j]ust as the legislature may not invade our province of procedural rulemaking for the court system, we may not invade the legislature's province of internal procedural rulemaking . . ."[xii]

Steadfast in the Worst of Cases

Perhaps no case better demonstrates the New Hampshire courts' determination to uphold the settlor's intent and to respect the separation of powers than *Scheffel v. Krueger.*[xiii]

This case was brought by a parent of a minor who had been sexually assaulted by a pedophile who recorded the crime and posted it on the internet. The minor's parent sought to attach the assets of a spendthrift trust set up by the defendant's grandparent.

The New Hampshire Supreme Court looked at the plain language of the spendthrift statute, which provided only two exceptions to the general rule that spendthrift provisions are enforceable. The first exception was self-settled trusts and the second was fraudulent transfers. This case involved neither.

Despite what must have been intense pressure and unanimous public opinion, the court refused to question the wisdom of a statute on the basis of public policy, noting that it is the legislature's role to determine whether there should be an exception for tort creditors.[xi]

Appointed Versus Elected Judges

The *Scheffel* decision highlights an important facet of the New Hampshire judiciary: judges are appointed, not elected, and serve until retirement (no later than age 70).

Recent studies show that appointed judges, who do not face the pressure of public opinion or spend time campaigning and otherwise wooing the public, outperform judges who are elected. A study published in 2013 concluded that: "justices that are shielded from voters' influence . . . on average (i) have better information, (ii) are more likely to change their preconceived opinions about a case, and (iii) are more effective (make less mistakes) than their elected counterparts . . ."[xv]

The facts of *Scheffel* are such that any elected judge who had held for the defendant surely would have lost the next election. There would have been tremendous public pressure, undoubtedly stoked by saturated media coverage, to find a way to allow the child's mother to reach the assets of the spendthrift trust.

Such a holding, as just as it may seem, would have flown in the face of the clear, unambiguous terms of New Hampshire's spendthrift statute and created uncertainty for people establishing trusts with assets they wish to protect from their beneficiaries' creditors. The *Scheffel* case is now included in law treatises and law school curriculum as a textbook case of upholding a settlor's intent to restrict access to trust assets by the beneficiary's creditors.[xvi]

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Presently there are 33 states that elect judges to at least one of their courts.[xvii] Alaska, South Dakota, and Tennessee are among those states. New Hampshire is not. This may well be an important indicator of a state court's consistency and reliability over time.

Decades of Consistency

New Hampshire's tradition of judicial restraint long precedes *Scheffel v. Krueger.* In the 1983 case of *Hanke v. Hanke*, the Supreme Court of New Hampshire expressly declined to create the "illusory transfer doctrine," which courts of other states such as New York had created under similar circumstances.

In *Hanke*, the decedent had transferred 98% of her assets to a revocable trust. The central issue was whether New Hampshire's spousal elective share, which on its face applies to one's "estate," would apply to the trust assets.

The surviving spouse argued that the transfer to the trust was illusory and pointed to New York caselaw where the court created the illusory transfer doctrine. That doctrine states that a transfer is illusory unless the transferor spouse relinquishes ownership and control of the property in good faith. Because a settlor can amend or revoke a revocable trust at any time,

he or she has not relinquished control over its assets.

In declining to adopt the illusory transfer doctrine (and thus refusing to create new law), the Supreme Court of New Hampshire stated that:

"We believe that our test, which focuses on *objective* manifestation of the transferor's intent, properly balances [the policies of protecting a surviving spouse versus allowing a spouse to freely transfer property]. If the legislature considers [this test] to be an improper balancing of these policies, it can adopt the [illusory transfer doctrine] or any other provision which it believes correctly balances these policies."[xviii]

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In 2001, the New Hampshire Supreme Court in *Robbins v. Johnson*[xix] refused to expand the state's "pretermitted heir" statute to include lifetime trusts. A pretermitted heir is someone who would unintentionally be disinherited under a will because the testator did not know him or her. A classic example is a descendant not named in a will because he or she was born after the will was made. In such a situation, a pretermitted heir statute would award the forgotten heir a share of the inheritance.

The plaintiff in *Robbins* argued that the New Hampshire pretermitted heir statute should apply to the decedent's lifetime trust as a matter of public policy because such trusts are commonly used as will substitutes, a practice that was not in place when the legislature enacted the law.

The court looked to the plain language of the statute, which says it applies to wills but makes no mention of trusts, and therefore held that the statute only applies to wills, and not trusts. In its holding, the court wrote, "[w]e decline the plaintiff's invitation to construe the statute contrary to its plain meaning."[xx]

More recently, in 2011 the Supreme Court of New Hampshire in the *Tamposi* case upheld the terms of a trust by again employing a plain read of a trust instrument and refusing to look to extraneous factors.[xxi]

Here the issue was whether a beneficiary who had consistently received distributions from a trust for 15 years should have to include future trust distributions as income in a divorce proceeding when determining how to divide the marital estate. Under the trust, the beneficiary was eligible to receive distributions for her "education and maintenance in health and reasonable comfort" but the trustee was not required to make distributions to her.

Despite the well-established pattern of distributions, the court held that no part of the trust would be subject to the divorce proceeding. The court looked no further than the trust instrument, which provided for

discretionary distributions, and the relevant statute, which states that a discretionary beneficiary has no vested right or property interest, but rather a "mere expectancy."

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A True Focus on Settlor's Intent

The New Hampshire judiciary has also cemented its reputation for making the settlor's intent, as evidenced by a plain read of the trust instrument, a critical lens through which to interpret a trust.

For example, the 2006 case *Appeal of David Lowy* [xxii] dealt with a trust set up by parents of a developmentally disabled adult son. The court ascertained that the purpose of the trust was to qualify as a special needs trust for purposes of qualifying the beneficiary for Medicaid. The court made this determination by reading the trust, which stated such purpose expressly.

The trust contained an extraneous phrase that theoretically could have resulted in the beneficiary being disqualified from Medicaid, but the court held that when viewed through the lens of the settlor's intent as plainly stated in the trust instrument, the phrase could not be construed in such a way and therefore the trust did qualify as a special needs trust.

In the 1986 case of *Bartlett v. Dumaine*,[xxiii] the New Hampshire Supreme Court focused on the settlor's intent in upholding a non-traditional trust arrangement with unconventional investments and business practices.

In refuting claims for breach of fiduciary duties brought by the beneficiaries, the court made particular note of the fact that the settlor established this arrangement as a highly-customized vehicle from which to run his business similar to what he had employed during his life. In its analysis, the court set forth some of the underpinnings for separating trustee functions among different individuals or entities, which decades later would develop into a central tenet of many of today's modern trust statutes.

Consistency Across Disciplines

New Hampshire courts have not just been consistent in areas involving trust disputes; they have proven their reliability in numerous areas of the law. Although a detailed discussion here is outside the scope of this paper, many such cases involve contract disputes, while others involve real estate, tax and constitutional issues.[xxiv]

A Happy Lack of DAPT Caselaw

Many in the legal community appear to be anxiously awaiting a case approving so-called "domestic asset protection trusts" (DAPTs), also referred to as self-settled spendthrift trusts. These somewhat controversial vehicles allow a person to set up an irrevocable trust, fund it, name herself as a beneficiary, and

shield the trust assets from her creditors. In other words, you can have your cake but your creditors cannot.

Traditionally these types of trusts have been set up as offshore trusts in a foreign jurisdiction. More recently certain U.S. states, including New Hampshire, began authorizing them.

Most states allow a creditor to reach trust assets of a DAPT to the same extent that the settlor can enjoy them. Thus, for example, the assets of a revocable trust are fully exposed to the settlor's creditors. Many view DAPTs as problematic because they allow a person to access trust assets for their own purposes but deny access to that person's legitimate creditors. These critics argue that such vehicles may benefit those of low moral turpitude and encourage them to engage in objectionable behavior.

Certain states, including Nevada, South Dakota, and Alaska, have very aggressive DAPT statutes. Their statutes could allow a person to establish a DAPT to "protect" against child support orders and alimony.

Take the case of *Battley v. Mortensen*,[xxv] for example, where after an expensive divorce Mr. Mortensen transferred about $60,000 of real estate and $100,000 of cash to an Alaska DAPT, naming his mother a trustee and himself and his descendants as beneficiaries. He then proceeded to run up $250,000 of personal credit card debt and declared bankruptcy four years later, just after the Alaska statute of limitations had expired for the funding of the trust. His plan apparently was to wipe out the $250,000 of debt via bankruptcy and still have access to the DAPT assets.

In the bankruptcy proceeding, Mr. Mortensen argued that the trust assets were sheltered in the DAPT and thus beyond the reach of his creditors. He also argued that the Alaska four year limitations period had to apply, not the ten year federal bankruptcy statute of limitations.

The U.S. Bankruptcy Court held that Mr. Mortensen's transfer to the trust was evidence of an intent to fraud. It also held that the ten year federal bankruptcy period of limitations applied. As such, the creditors could reach the assets of the DAPT.

As seen in *Mortensen*, courts are hostile toward DAPTs. Of course that may be at least in part due to the bad fact patterns and deceptive acts of the defendants often found in DAPT cases.

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It may not be surprising that court cases involving DAPTs in states with such aggressive statutes involve defendants who are not exactly model citizens. It calls to mind the old adage "be careful of what you wish for." These characters

come before the court with their schemes laid bare and the judge (who is likely elected) bends over backwards to pierce the trust.

That, in turn, may lead to "bad" caselaw in that state, meaning that other people who may be looking to establish DAPTs for more acceptable reasons essentially are not able to take advantage of something the legislature specifically authorized.

Not surprisingly, allowing for "protection" from child support orders is held out as a positive factor by proponents of states that have enacted these hyper-aggressive DAPT statutes. Ironically, the caselaw developing in connection with those statutes may create a disincentive to set up DAPTs in those states.

Happily, New Hampshire has no such caselaw, perhaps because its DAPT statute does not allow a person to receive protection from child support claims or alimony. It stands to reason that people setting up DAPTs in New Hampshire are using them for more legitimate reasons. These may include a person in a high risk profession – for instance a physician protecting a portion of his or her assets to augment insurance coverage, or a person contemplating marriage using a DAPT in lieu of a prenuptial agreement.

A Comparison to Delaware

Although Delaware is often credited with having a long history of caselaw supportive of trusts, it is clear that the aura of Delaware's corporate caselaw has extended its glow to include trusts.

For many decades, Delaware has been the state in which most businesses have incorporated. There are now over a million corporations set up in Delaware[xxvi] and in 2011 the state collected roughly $860 million in taxes and fees from its absentee corporate residents.[xxvii] That money accounted for a quarter of the state's total budget.[xxviii] Clearly, corporations are critical to Delaware's economy. That reality is reflected in its judiciary.

Disputes involving trusts are heard at the Court of Chancery. According to a 2012 report issued by the Delaware State Bar Association's Committee on Judicial Compensation, the Court of Chancery has "the responsibility to issue more formal opinions than the state and federal appellate courts."[xxix] The report also states that the Court of Chancery "over the last two centuries has been the forum for the major corporate decisions affecting the economic health of business entities."[xxx] The report makes no mention of trusts.

By way of background, Delaware Court of Chancery judges (called "Chancellors") are appointed by the governor and confirmed by the state senate. They serve 12 year terms, at which point they must be re-appointed. Article IV, Section 3 of the Delaware constitution states that no more than a "bare majority" of judges on a given court may be of the same political party. Thus, if there are three Republicans and a Democrat retires, the Delaware constitution mandates that a Democrat replace the retiring

Chancellor, regardless of which candidate has the best qualifications.

A review of the biographies of the current Chancellors reveals that most come from backgrounds involving exclusively corporate law and none list any experience in trust law.[xxxi] This fact, along with their very challenging workloads involving a wide range of subject matters, may be reasons behind a few recent holdings that are not consistent with the state's marketed reputation as the place where trusts reign supreme.

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Just this past August, for example, in the *Kloiber* case, the Delaware Court of Chancery held that Kentucky had jurisdiction over a Delaware dynasty trust in connection with a divorce case.[xxxii] This was likely a big surprise to those who market Delaware trusts and tell clients that only Delaware courts can settle matters involving a Delaware trust. It seems that this has been a case of marketers over-promising.

Delaware's Qualified Dispositions Act states that the Delaware Court of Chancery has "exclusive jurisdiction" over trusts that qualify as a Delaware trust under the statute. The case involved a husband who was trying to remove the trust from his divorce proceeding in Kentucky by petitioning the Delaware court and claiming that the "exclusive jurisdiction" language in the statute meant that only the Delaware court could decide the fate of the Delaware trust.

In a 51-page opinion the court held that the "exclusive jurisdiction" language in the statute meant that the Court of Chancery has jurisdiction over other *Delaware* courts, not over other states' courts. Thus if a case were filed in a different Delaware court, it would have to be moved to the Court of Chancery, but the statute does not prevent another state's court from hearing a dispute about the Delaware trust.

Another recent Delaware case is *Peierls*.[xxxiii] Delaware proponents have held out this case as a major victory for trusts and proof of the Delaware Supreme Court's preeminence. Less publicized is the fact that the state's Supreme Court had to overturn the Court of Chancery in delivering this result.

The case involved, among other things, whether a choice of law provision indicating that New York law governed a trust precluded Delaware law from applying for purposes of trust administration. A Delaware trustee was to be appointed and the petitioners argued that Delaware law must therefore govern trust administration.

At the trial level, the Court of Chancery held that New York law must govern trust administration. On appeal, the Delaware Supreme Court reversed that holding, finding that unless the choice of law provision provides that the trust must *always* be governed by a

particular state's law, the law of the state in which trust administration takes place will govern administration.[xxxiv]

While the Delaware Supreme Court's reversal of the Court of Chancery 's decision in *Peierls* is welcome, it is also a reminder that trust cases may face difficult challenges because they will always be heard in the first instance by the Court of Chancery, a court with broad corporate law expertise, but comparatively little trust experience.

Contrast that with New Hampshire, where disputes involving trusts will be heard by a court dedicated solely to trust litigation and led by a judge with 30 years of relevant experience. Also worth noting is that the rule ultimately established in *Peierls*, while certainly a positive for trusts, is a matter of clear statutory law in New Hampshire.

Conclusion

For anyone considering different jurisdictions in which to site a trust, New Hampshire offers the following:

- No tax of any kind imposed on non-grantor trusts;
- A full menu of state-of-the-art trust law features, including decanting, perpetual trusts, non-judicial settlements, quiet trusts, and directed trusts;
- A long history of a non-activist judiciary respectful of the separation of powers and staffed with judges who are not elected and therefore less inclined to bend to political or public pressure than their counterparts in most other states;
- A trial court exclusively devoted to trust litigation and staffed by experienced, competent personnel;
- A legislature proven over time to be cooperative regardless of politics and party control;
- A large pool of well capitalized trust companies, some with a 100+ year history, and all with experienced, highly educated and well trained personnel drawn from a geography encompassing some of the world's greatest universities;
- A reserved, deliberative culture that is respectful of privacy; and
- Across all levels of government and in the private sector, a singular focus on maintaining the state's status as a premier trust jurisdiction.

Such an offering should give any advisor confidence in New Hampshire when advising clients where to site their trusts.

Endnotes

[i] Other premier states are typically listed as Alaska, Delaware, Nevada, Tennessee, and South Dakota.

[ii] Of the premier trust jurisdictions, New Hampshire and Alaska ranked the highest. Robert Smith, "Ranking of States in Protections," *Privacy Journal* (2012), http://www.privacyjournal.net/events.htm. Both states were ranked in the 2nd tier, which included rankings from 11th to 20th (sorted only alphabetically within tiers). Nevada was included in the third tier (21st to 30th), Tennessee was placed in the fourth tier (31st to 38th), while Delaware and South Dakota ranked in the bottom tier (39th through 50th). The *Privacy Journal* is a monthly newsletter in circulation since 1974.

[iii] Chris Edwards, "State Bureaucracy Update," *Tax & Budget Bulletin*, No. 29, Cato Institute (January 2006).

[iv] *Sunlight Foundation and Open States, Open Legislative Data Report Card (2013)*, available at http://ballotpedia.org/Open_States%27_Legislative_Data_Report_Card.

[v] These features include perpetual (non-charitable) trusts, decanting, self-settled spendthrift trusts, division of trustee functions among different fiduciaries (e.g., trust protectors) with segregated liability protection, and dramatic expansion of acts available without court supervision, among others.

[vi] Some may argue that self-settled spendthrift trusts have plenty of case law, but the cases to date have involved fraudulent behavior not protected by the statutes. People still await a case that does not involve such "bad facts."

[vii] See *Delaware State Courts, The Official Web Site of the Delaware Judiciary*, available at: http://courts.delaware.gov/chancery/jurisdiction.stm

[viii] *Bodeau v. Bodeau*, 92 N.H. 183, 184 (1942).

[ix] *Concrete Company v. Rheaume Builders*, 101 N.H. 59, 61, 132 A.2d 133, 135 (1957).

[x] *In re Petition of State of N.H.*, 872 A.2d 295, 297 (N.H. 1992).

[xi] *Hughes v. Speaker of the House of Representatives*, 876 A.2d 736 (N.H. 2005).

[xii] Id.

[xiii] *Scheffel v. Krueger*, 146 N.H. 669, 782 A.2d 410 (2001).

[xiv] Id.

[xv] See, e.g., "To Elect or Appoint? Bias, Information and Responsiveness of Bureaucrats and Politicians," *Journal of Public Economics*, Volume 97 (January, 2013): pp.230-244.

[xvi] See, e.g., Charles E. Rounds, Jr. and Charles E. Rounds, III, *Loring and Rounds, 2014: A Trustee's Handbook* (2014): pp. 349-50. See also Dobris, Sterk and Leslie, *Wills, Trusts and Estates* 3d ed., p. 83 (2008).

[xvii] National Center for State Courts, *State Court Organization, Selection of Trial Court Judges* (2012), http://data.ncsc.org/QvAJAXZfc/opendoc.htm?document=Public%20App/SCO.qvw&host=QVS@qlikviewisa&anonymous=true

[xviii] *Erwin Hanke, Sr. v. Erwin Hanke, Jr., et al.*, 123 N.H. 175, 459 A.2 246 (1983) (emphasis added).

[xix] *Robbins v. Johnson*, 147 N.H. 44, 780 A.2d 1282 (2001).

[xx] Id.

[xxi] *In the Matter of Theodore J. Goodlander and Elizabeth M. Tamposi*, 161 N.H. 490, 20 A.3d 199 (2011).

[xxii] *Robbins v. Johnson*, 147 N.H. 44, 780 A.2d 1282 (2001).

[xxiii] *Bartlett v. Dumaine et al.*, 128 N.H. 497, 523 A.2d 1 (1986).

[xxiv] See Case No. 2011-0146, *Members of The Meadow at Moody Point Homeowner's Association, Inc. v. Walter W. Cheney*, (2012 slip opinion) ("Absent ambiguity…the parties' intent will be determined from the plain meaning of the language used in the contract"); *N.H. Municipal Trust Workers' Compensation Fund v. Flynn*, 133 N.H. 17 (1990) ("we will not redraft the [state] constitution in an attempt to make it conform to an intention not fairly expressed in it"); *Verizon New England, Inc. v. City of Rochester*, 156 N.H. 624 (2007) (stating that "the city ignores the plain language of [the statute]" and holding that the city's imposition of property tax was a violation of the State Constitution's Equal Protection Clause); *Carleton v. Edgewood Heights Condo. Owners' Assoc.*, 156 N.H. 407, 408 (2007) (employing plain read of condominium association bylaws); *Sherman v. Graciano*, 152 N.H. 119 (2005) ("[a]bsent fraud, duress, mutual mistake, or ambiguity, we must restrict our search for the parties' intent to the words of the contract"). See also *Axenics, Inc. v. Turner Construction Company* 164 N.H. 659 (2013) (holding that subcontractor could not recover under an unjust enrichment theory from either the general contractor or property owner because a valid contract governed the subject matter of the claim, and internal memoranda, work product, or other materials created for the purpose of settlement cannot be used at trial as evidence of liability or damages); *Clapp v. Goffstown Sch. Dist.*, 159 N.H. 206 (2009) (contract); *Beckstead v. Nadeau*, 155 N.H. 615 (2007) (contract); *Appeal of Town of Durham*, 149 N.H. 486, 487 (2003) (contract).

[xxv] *Battley v. Mortensen*, Adv. D. Alaska, No. A09-90036-DMD (2011).

[xxvi] See Delaware Division of Corporations website, available at: http://corp.delaware.gov/.

[xxvii] Leslie Wayne, "How Delaware Thrives as a Corporate Tax Haven," *New York Times* (June 30, 2012).

[xxviii] Id.

[xxix] Delaware State Bar Association Committee on Judicial Compensation, *Report to the Delaware Compensation Commission*, December 11, 2012, available at: http://www.delawarepersonnel.com/class/docs/comp/2013_de_bar_assoc_report.pdf

[xxx] Id.

[xxxi] Id.

[xxxii] *IMO Daniel Kloiber Dynasty Trust U/A/D December 20, 2002*, Court of Chancery, State of Delaware C.A. Number 9685-VCL (2014).

[xxxiii] *In the Matter of the Peierls Family Inter Vivos Trusts*, Case No. 13, 2013C (Del. 2013).

[xxxiv] Id.