White Paper No. 41

Amicus Curiae brief in the Knight (Rudkin) case

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Note to our readers: It will not have escaped notice that this is not really an official amicus curiae (literally, 'friend of the court") brief in the sense that it has been filed with the United States Supreme Court under Rule 37.6 in the case of Knight v. Commissioner of Internal Revenue.[1] Instead, it is really an amicus opes ("friend of the investor") brief filed with the court of public opinion. We hope, of course, that the Court will take notice of the arguments we make, which are public policy in nature (although we take a few swipes at the legal arguments). We have formatted our discussion as though it were an actual amicus brief, but it will quickly become clear that we have drifted rather far afield from the dry legal arguments the Justices are used to plowing their way through.

[1] 2007 WL 2406801 (US 2007). At the lower court levels, the *Knight* case was known as the *Rudkin* case. Go figure.

No. 06-1268

IN THE

Supreme Court of the United States

MICHAEL J. KNIGHT,
Trustee of the William L. Rudkin Testamentary Trust,
Petitioner,
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF GREYCOURT & CO., INC. AS *AMICUS CURIAE* IN SUPPORT OF THOUGHTFUL INVESTORS EVERYWHERE

Greycourt & Co., Inc. ("Greycourt") submits to the court of public opinion this brief as *amicus curiae* in support of thoughtful investors everywhere and in opposition to the well-intended but otherwise wrong decision of the Sixth Circuit Court of Appeals in *O'Neill v. Commissioner*,[2] and to the bizarre decision of the Second Circuit in *Rudkin v. Commissioner*.[3]

INTEREST OF THE *AMICUS CURIAE*

Greycourt is a wealth advisory firm that advises on billions of dollars of private capital, some of which is, and all of which potentially could be, held in trust. Thus both Greycourt as an advisor and its clients as investors and trustees have a direct stake in the outcome of this litigation.

QUESTION PRESENTED

Technically, the question presented in *Knight* is whether investment advisory expenses incurred by a trustee in the administration of a trust are fully deductible under IRC Section 67(e) or are instead subject to the limitation imposed on the deductibility of miscellaneous itemized deductions under IRC Section 67(a), commonly referred to as the "2% floor."[4]

More broadly, it is clear under the law (albeit unfortunate as a matter of public policy) that investment advisory expenses incurred by *individual* investors cannot be deducted unless they exceed 2% of the investor's adjusted gross income (AGI). The *Knight* case represents an attempt by Mr. Knight, who was the trustee of the Rudkin Testamentary Trust, to exempt trusts from this rule. According to Knight, trusts should be allowed to deduct all investment expenses because trusts are subject to fiduciary rules, while individual investors are not. The Second Circuit Court of Appeals disagreed with Knight's argument and held that trusts, like individual investors, can only deduct investment expenses to the extent that they exceed 2% of the trusts' AGI. Most lower courts have agreed with the Second Circuit, but the Sixth Circuit, in *O'Neill v. Commissioner*,[5] held that trusts could deduct investment expenses above the line. Since the Circuits have not been unanimous, Knight petitioned the Supreme Court for review of the Second Circuit's decision and the Supreme Court has agreed to hear the case. Oral arguments are expected to be heard later this year.

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[2] 994 F.2d 302 (CA6 1993).

[3] 467 F.3d 149 (CA2 2006).

[4] Or, as investors sometimes say, investment expenses are deductible only "above the line," while other business expenses are deductible "below the line."

[5] Op. cit., note 2.

Greycourt is an investment advisor and we charge fees that are subject to the 2% floor in the case of all individuals, and in the case of all trusts other than those domiciled in Michigan, Ohio, Kentucky or Tennessee (the states covered by the Sixth Circuit Court of Appeals). One might well expect us to favor *O'Neill*, oppose *Rudkin*, and be done with it. But such a straightforward approach would be highly un-Greycourt-like. Instead, for reasons we will soon make clear-as-dishwater, we oppose both *O'Neill and Rudkin*.

As noted above, *O'Neill* held that trusts could deduct investment expenses below the line because trustees are fiduciaries and therefore stand in a different position than individual investors. Although we are deeply sympathetic to the desire of trusts to deduct their investment costs, we oppose this approach because we see no reason why trust investors should be treated differently than individual investors in terms of the deductibility of investment expenses. To give trust investors such an advantage would simply encourage the migration of assets from individual hands into the hands of trustees – surely not a desirable outcome from the point of view of anyone but trust companies.

In *Rudkin*, on the other hand, the Second Circuit held that trusts could only deduct investment expenses above the line, like individual investors. Since this is also Greycourt's position, we should support the decision in *Rudkin*, right? Wrong. Here is the problem. What the Second Circuit literally said in *Rudkin* is that trustee fees are fully deductible, but that other costs, including investment costs, are subject to the 2% floor. The grotesque result is that if the trustee sensibly selects an outside, independent investment advisor, the fees it pays are subject to the 2% floor. On the other hand, if the trustee selects itself to manage the trust assets – the moldy old closed architecture approach – its fee would be fully deductible *because all costs would be bundled into one trustee's fee, despite the fact that a substantial portion of the fee would really represent investment advisory expenses*.[6]

What *Rudkin* really represents, then, is a thinly disguised attempt to shore up the banking industry's crumbling monopoly over the trust business. Most bank trust departments operate in a closed architecture environment and bundle their fees – i.e., grantors and beneficiaries have no idea what they are paying for custody versus investments versus reporting versus fiduciary services and so on. Bankers want to continue these trust-

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[6] "What's ironic about [the *Rudkin* decision] is that if the trustee of the trust is a corporate fiduciary that manages the trust's assets itself and doesn't hire outside investment advisors, those fees are fully deductible – even though a portion of them represent costs for investment management." *Tax Topics*, Blanche Lark Christerson, April 27, 2007, Deutsche Bank Private Wealth Management, pp. 3-4. Mr. Knight's brief states that the IRS "has argued that 'trustee fees' are deductible, even though they primarily purchase investment management services." Brief for Petitioner, p. 44, note 32. In its own brief, happily, the IRS disagrees with this characterization of its argument. See the Brief for Respondent, page 24, note 7:

unfriendly practices, but they know that if they do so trust business will continue to migrate to firms that operate in an open architecture, unbundled environment.

One way to slow the erosion of the banks' monopoly would be for the United States Supreme Court to give them a powerful competitive advantage over these trust-friendly competitors by allowing bundled trustee fees to be fully deductible while unbundled fees charged by independent advisors would continue to be subject to the 2% floor. Needless to say, we are opposed to this idea, and we hope the Supreme Court will be opposed to it, too.

ARGUMENT

Background: The tax treatment of business and investment expenses. For those of our readers who don't spend every day poring over the Internal Revenue Code, the best way to illustrate the disparate treatment afforded "business" expenses and "investment" expenses is to observe the fates of our friends, the adult twins, Charlie and Charlene, who live across the street from each other in a quiet Midwestern town. Both twins experienced considerable success in their early careers and, in midlife, used their considerable nest eggs to launch new companies.

Charlie started a widget business, Moneybags & Co. Moneybags is a "platform" company, that is, it doesn't actually do much of anything, but sees to and oversees the doing of things by others. Thus, the manufacture of the widgets is farmed out to a firm in China, the marketing of the widgets is farmed out to a third party distributor in Omaha, and so on. Other than Charlie, Moneybags has only one fulltime employee, a bookkeeper. At the end of the year, when Charlie fills out his Schedule C,[7] he adds up Moneybags' expenses, deducts them from Moneybags' revenue, and – voila! – he has a profit number that he and the IRS agree on.

Meanwhile, across the street, Charlene has launched her own firm, Minibucks & Co. Minibucks is in the business of managing capital (Charlene's) and, like Moneybags, is a platform company, which means that it has outsourced most of its activities. For example, Minibucks has engaged an independent financial advisor to design the portfolio and to engage top-flight money managers. Other than Charlene, Minibucks has only one fulltime employee, an investment analyst. At the end of the year, when Charlene fills out her Schedule C, she adds up Minibucks' expenses, deducts them from Minibucks' revenue, and – voila! – she has a profit number that the IRS sneers at.

And it turns out that these sneers are fully justified. Under the tax code, Moneybags' expenses are "ordinary and necessary business expenses" and are fully deductible, while

[7] Schedule C is the IRS form used to calculate profit or loss from a business operated as a sole proprietorship.

Minibucks' expenses fall into the dreaded "miscellaneous" category and are deductible only to the extent that they exceed 2% of Charlene's adjusted gross income.[8] Since Charlene is a careful businesswoman, Minibucks' expenses never exceed 2% of her gross income. As a result, over the years all of Moneybags' expenses have been deductible while none of Minibucks' expenses have been deductible. Charlene is very unhappy about this and she plans to write her Congressperson, an action we think everyone should emulate.[9]

Back to *Knight*. Now that we understand the differing tax treatment of business expenses (good) and investment expenses (lousy), we can turn to the *Knight* case, which also deals with the question whether certain kinds of expenses are fully deductible, but in a very narrow way. The Rudkin capital was not held directly, but was in a trust, and while in most ways trusts are taxed exactly like human persons, there are some exceptions. Most of these exceptions are designed to prevent people from gaining the advantages of trusts without also being subjected to the disadvantages. But in one case trusts have an advantage over individuals: certain trust expenses that are incurred only because the trust is the taxpayer are fully deductible,[10] while most other expenses – especially investment expenses – are deductible only above the 2% floor, as is the case with individual investors like Charlene.

Like Charlene, the Rudkin Trust hates the fact that investment expenses are subject to the 2% floor. We don't blame them. But instead of clogging up the courts with their complaint, they should have written their Congressperson, like Charlene. Because the case was taken to the courts, we are now faced with the *Rudkin* decision, which effectively converts this narrow exception for certain trust expenses into the Mother of All Loopholes, at least if the vendor is a closed architecture bank trustee.[11]

The legal argument. Strictly speaking, the legal arguments are outside our province, as we are financial advisors, not lawyers.[12] But in this case Mr. Knight's arguments seem so

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[8] The IRS argues in its brief in the *Knight* case, apparently perfectly seriously, that investment expenses were disallowed by Congress *in an effort to assist taxpayers*. "Congress believed [that allowing taxpayers to deduct investment expenses] required extensive taxpayer recordkeeping. * * * The 2% floor, Congress believed, would relieve taxpayers of the burden of recordkeeping…" Brief for Respondent, page 33.

[9] At least for families whose main occupation is managing their capital, investment expenses are precisely analogous to the business expenses incurred by, say, family farmers.

[10] Section 67(e) of the tax code allows full deductibility of expenses that are incurred in connection with the administration of a trust, but only if the costs would not have been incurred if the property were not held in trust.

[11] The exception in 67(e) was clearly designed to cover things like the cost of court accountings. Under certain circumstances a trustee can be required to account for all the operations of a trust, supervised by a court.

[12] Actually, some of us *are* lawyers, but we are in recovery.

transparently wrong that we decided to run them by a rather dim first year law student we know, just to check our own judgment. We found her puzzling over Lord Langdale's opinion in the original *Knight* trust case, *Knight v. Knight*, 3 Beav 148 (1840),[13] which she was happy to set aside in favor of the instant *Knight* case. The argument of the Petitioner in *Knight* (we told her) goes like this: Trusts must invest their capital, because of fiduciary duties, while individuals can invest or not, as they please. Thus (sayeth Mr. Knight), investing trust capital is an activity that a trust must engage in only because it is a trust. Ergo, trust investment expenses should be fully deductible, while investment expenses for individuals should remain subject to the 2% floor.

"It's like, simple," she articulated, and proceeded to point out (here we paraphrase) that this argument simply confounds the question of *whether* to invest with the question of *how* to invest. This has been plain since at least 1830, when Justice Samuel Putnam instructed trustees to "observe how men of prudence, discretion and intelligence manage their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety of the capital to be invested."[14] Trustees are not, Justice Putnam made plain, forced to do something that individual investors ("men of prudence") don't do. Instead, like all owners of capital, they must invest their funds one way or another. Justice Putnam's point is that the *way* trustees should manage their trust capital is slightly different: they shouldn't do stupid things, like speculate. The reason is simple: the capital doesn't belong to the trustee, but (ultimately) to the beneficiary.[15]

Most owners of capital (not just trusts) are constrained in one way or another regarding how they can invest. Smaller individual investors can't invest in hedge funds or private equity partnerships, because the SEC, for reasons best known to itself, won't let them.[16] Those same smaller investors can't invest with most of the best money managers, because

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[13] It was in this case, in 1840, that Lord Langdale formulated the "three certainties," that is, requirements to create a valid trust. A bit late in the day, if you ask us, considering that trusts had been around since the Crusades.

[14] *Harvard College v. Amory*, 9 Pick. (26 Mass.) 446, 461 (1830).

[15] The fundamental reason a trustee can be surcharged for imprudent investing is that otherwise he suffers no loss – the loss is incurred by the beneficiary. When an individual investor invests imprudently, he or she suffers the loss directly, rather than being surcharged for it. Hence, given our knowledge of human nature, we can confidently predict that, absent fiduciary liability, trustees would be speculating a very great deal more often than individual investors.

[16] A recent newspaper article quotes a smaller investor complaining about his inability to invest in hedge funds, while wealthier investors can and therefore get even richer: "Let me invest in hedge funds! Stay out of my wallet, stop trying to protect me from myself, stop presuming to know more than I do about my own life, risk-tolerance and financial sophistication." *Wall Street Journal*, September 1-2, 2007, page B1.

the minimum account sizes are too large. Corporate investors are limited mainly to treasury operations (mostly optimizing the return on temporary cash assets); state employee pension plans are often forced to invest in local pork barrel projects or to invest a fixed portion of their funds inside the state; sovereign investors are usually limited to investing in their government's own instruments; investors in 401(k) plans are limited to investing in the plan's investment options; and so on. There is nothing special about limitations on how capital must be invested.

More fundamentally, as Justice Putnam recognized almost two hundred years ago, every owner of capital, whether it be an individual, a trust, or anyone else, *must* invest its capital, like it or not. Some investors will, like Charlene, invest in a professionally advised, fully diversified portfolio, while another might convert the capital to currency and stuff it under his (very lumpy) mattress. This latter approach is a very conscious investment strategy, and one that would likely perform quite well under conditions of economic deflation, since it is designed to avoid the vagaries of the capital markets and the banking system.[17] One of the burdens of owning capital is that it must be placed at risk, one way or another: "Do what you will, the capital is at hazard."[18] There is nothing special about trusts in this regard.

The policy arguments. But it's not the quaint legal reasoning of Mr. Knight that is so outrageous, that has brought our blood temperatures up to 212° F., and that has caused us to enter with trepidation into the arcane world of the amicus brief. What's so appalling here is the cynical (or clueless) attempt to protect the moldering monopoly over trust assets that has been enjoyed by the banking industry since before Justice Putnam was born.

To understand what is at stake from a policy perspective in *Knight*, perhaps the simplest approach is to return to our good friends, Charlie and Charlene. It turns out that the twins have not only launched companies with their nest eggs, each has also funded an irrevocable trust for future generations of Charlies and Charlenes. The different approaches Charlie and Charlene took in organizing their trusts will tell us everything we need to know about what the gremlins are up to in *Knight*.

As for Charlie, let's face it, he is a nice enough fellow, but about trusts, fiduciary principles, and investing Charlie is, well, let's say "uninformed." When Charlie set up his trust he tootled over to the local branch of Predatory Bank & Trust Co., N.A., where a smiling trust officer (we will meet him soon) patted Charlie on the head and assured him that Predatory would "take care of everything," which it proceeded to do.

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[17] And to expose the capital instead to the vagaries of greedy neighbors, thus ratcheting up security costs. We ought never forget the sagacious words of Willy Sutton's younger brother, Nilly, who, when asked why he robbed mattresses, replied, "Because that's where the money is."

[18] *Harvard College*, op. cit., note 14, page 468.

Charlene, as we know, is an experienced investor, which means, among other things, that she is intimately familiar with the many conflicts of interest Predatory and other banks bring to the table, and therefore the many ways her trust could be disserved by these institutions. Instead of tootling over to Predatory's office, Charlene sat down with a white sheet of paper, outlined the main services her trust would need, and then identified the best practice and best vendor in each area. Let's compare the differences between how Charlie and Charlene proceeded by looking at Charlene's list:

1. *Safeguarding the assets of the trusts*. For some reason people are always stealing financial assets and running off to Brazil with their carioca[19] girlfriends. One way to prevent this is for a trust to establish a custody account with a bank and to place the trust assets in that account. These accounts are segregated from the bank's other assets (and hence aren't subject to creditor claims if Predatory goes bankrupt), and they also ensure that money managers don't actually hold the trust assets they are managing, but merely direct their investment.

Custody, Charlene knows (but Charlie doesn't) is a tough business. It's capital-intensive and low-margin, and only a very few institutions worldwide invest substantially in it and compete at a world-class level. Charlene identified these few banks, picked one and put her trust assets there. If someone is going to Brazil, they aren't taking Charlene's money with them. Charlie, alas, put his trust assets with Predatory without comparing other options. Over the years, Charlene's trust has operated smoothly, while Charlie has ended up being driven slowly insane by the many errors, limitations and annoyances placed in the operational path of his trust by the custody-challenged folks at Predatory.

2. *Selecting an institution with good fiduciary skills*. Trustees are only occasionally called upon to exercise fiduciary discretion, but when the call comes it is usually a very important occasion for the trust's grantor and beneficiaries. Yet virtually all large banks refer such decisions to a "trust committee" made up of bank executives who have never met the grantor or the beneficiaries, and whose overriding concern is to make a decision that won't expose the bank to any possible liability. Exactly how this process comports with the bank's fiduciary duties has always puzzled us, but certainly the interests of the grantor and beneficiaries are well down the list of items on the trust committee's mind.

On the other hand, there are (usually smaller, usually independent) institutions who see it as an important part of their fiduciary duty to know and understand their trust clients, so that sensible decisions can be made when discretion is

[19] A "carioca" is a person from Rio de Janeiro, presumably (though this is controversial) after the river of that name that runs through the city.

required. Charlene interviewed several of these institutions and selected one to be her trustee. Over the years Predatory has on many occasions made discretionary decisions that were in Predatory's interest but that sent Charlie and his beneficiaries into suborbital rage. Charlene, on the other hand, has been happy with the wisdom and impartiality of the decisions made by her trustee, even when she has disagreed with them.

3. *Investing the trusts' capital*. Although Charlie knows very little about investing, he does know that his results have very badly trailed those of Charlene's trust, and that therefore Charlene's descendants are going to be a lot richer than Charlie's. Charlene knows why: Charlie left all his assets at Predatory B&T. The portfolio Predatory designed for Charlie's trust was overly simplistic, reflecting both Predatory's limited product line, even-more-limited investment skills, and not-at-all limited conflicts of interest.

By contrast, Charlene insisted that her trust assets be invested employing the same "best practices" she used at Minibucks. A professional, independent advisor was selected to design a portfolio independent of the product line of any one institution. That advisor also worked with the trustee and Charlene to identify and select the best money managers in the world to manage the trust's assets. One nice aspect of Charlene's approach was that when a sector of the portfolio wasn't doing well, Charlene and her advisor could simply terminate that manager and replace it with another. Poor Charlie, unhappy as he was with Predatory's results, could make a change only via the expensive and uncertain expedient of going to court and seeking to have Predatory removed as trustee.

4. *Monitoring progress, costs, and value-added*. Every year, Charlie receives one bundled, nontransparent bill from Predatory (actually invoiced monthly and deducted from the trust's account automatically). What Charlie knows about that bill is that it is very high. What he doesn't know is even more important: (a) what services the bill is for, (b) how the costs are allocated among those services, and (c) what value he is getting. Moreover, since no one is looking out for the interests of Charlie's trust, Charlie must do it himself, miring him in almost constant misery as he attempts to understand what Predatory is up to and why the results are so poor.

By contrast, all the various service vendors Charlene's trust is using send separate, completely transparent bills. If the bills are too high, Charlene notices immediately and either negotiates lower fees or replaces the vendor. Because each provider is submitting separate bills, Charlene knows exactly what she is paying for everything, and can compare it to the value her trust is receiving. Charlene's

> independent advisor coordinates the activities of these vendors, leaving Charlene free to focus on the most important issues.

No one who knows anything about managing trust capital could have much good to say about the way Charlie has managed his trust, or much bad to say about the way Charlene has managed hers. But here is the result the _Rudkin_ decision would mandate: *Charlie's trust costs would be fully deductible, while Charlene's would be subject to the 2% floor.*

The rationale for this fantastic outcome – a radical insult to public policy if there ever was one – is simply this: banks like to bundle their fees and services, as Predatory has done, and since no one can tell which of these services are fully deductible and which aren't, all of them should be deductible! We modestly suggest, as the IRS suggests in its proposed regulations on Section 67(e),[20] that banks should simply itemize their fees so trust investors can see which are fully deductible and which aren't. Better yet, we suggest that trust investors never get themselves into such a conflicted morass in the first place, but instead follow Charlene's example and use best practices to manage their trusts.

The bottom line. If we could shoot the bankers at Predatory up with truth serum and subpoena them to testify before the Supreme Court, something like the following would transpire (edited, of course, for a general audience):[21]

> [The first banker to testify is Dewey Waddle, CEO of Predator Bank & Trust Co., N.A. Waddle resembles a caricature of the voracious banker: he is vastly overweight, wears a shirt collar several sizes too small, and has a face so red and so ripe that he might be sitting for a tomato soup commercial.]
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> *Waddle*: [Shouting.] I have here in my hand a list of 57 names! Names that were made known to Predatory Bank as being open architecture financial advisors! Independent trust companies! Best-in-class money managers! These people are working night and day to destroy the American banking system!
>
> *Chief Justice*: Sir, please keep your voice down.
>
> *Waddle*: Point of order! Point of order!
>
> *Chief Justice*: Stop shouting! Do you have a point to make, Mr. Waddle?

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[20] The proposed regulations would require banks to unbundle their fees and to allocate them among such services as investments, accountings, custody, etc. See *Section 67 Limitations on Estates or Trusts*, 72 Fed. Reg. 41243 (July 27, 2007).

[21] With abject apologies to Senator Joseph McCarthy, to Roy Cohn, Esq., and to Mr. Dewey Waddle.

Waddle: [Beginning to froth at the mouth.] Scum! Do you hear me? Scum!

Chief Justice: Have you no sense of decency, sir? Bailiff! Remove this man from the courtroom!

Waddle: [Being dragged backwards from the room.] What happened? What happened?

[Following a brief recess, a second banker takes the witness chair, one Reginald McN. Unctuous, IV, President of the Personal Trust Division of Predatory Bank. Unctuous is a tall, handsome man with a full head of dark hair, graying at the temples. His voice is deep and reassuring.]

Unctuous: Please pardon my colleague, gentlemen, his heart is in the right place, but sometimes his passion for monopoly gets the better of him.

Chief Justice: Please proceed, Mr. Unctuous.

Unctuous: I'll cut to the chase, Mr. Chief Justice. We're here today because we need your help. We need it big, we need it bad, and we need it now. For two long centuries we, the great American banks, have enjoyed an iron-fisted monopoly over the trust business. Now, suddenly, out of nowhere come these so-called *independent financial advisors*, these so-called *independent trust companies*, and their so-called *best practices*. [Dripping with sarcasm, emphases in the original.] I mean, who invited these guys to the party? And they're eating our lunch! If this keeps up we'll be forced out of the trust business altogether! Bankers will be thrown into the streets, wagging their tin cups under your noses!

Chief Justice: You paint a grim picture, Mr. Unctuous.

Unctuous: [Darkly.] Believe me, Mr. Chief Justice, you have no idea. But in deference to the sensibilities of the Court, I'll stop there and instead pose the key question: What's to be done? Oh, sure, we could change our ways – compete on price and service, improve our operations, switch to open architecture – but who needs that? No, we have a better idea. We'll continue to rip off th…. [Witness confers with counsel.] Strike that. We'll continue to conduct business as usual, but with one switch: our bundled, non-transparent, outrageously high fees will be – here's the genius of it – fully tax deductible! Meanwhile, the unbundled, fully transparent, much lower fees of those blasted open architecture trust companies will still be subject to the 2% floor!

> *Chief Justice*: But, sir, wouldn't this give the banking industry an unfair advantage? Trust settlors who are… ah… uninformed would be advantaged over trust settlors who proceed thoughtfully. Banks that follow closed architecture and bundle fees in a non-transparent manner would have an advantage over more trust-friendly institutions.
>
> *Unctuous*: Exactly! That's the beauty of it! And, Mr. Chief Justice, I don't need to remind you that the American banking community can be very grateful (heh, heh, heh), I mean very grateful, indeed (heh, heh, heh…).

Ok, we exaggerate. But the outcome of *Rudkin* is so preposterous, so completely lunkheaded, that if the arguments weren't being advocated by the bankers at Predatory they couldn't be made at all.

Respectfully submitted,

GREYCOURT & CO., INC.
October, 2007

(This paper was written by Gregory Curtis, Chairman of Greycourt & Co., Inc. Mr. Curtis can be reached at Greycourt & Co., Inc., 607 College Avenue, Pittsburgh, PA 15232, (412) 361-0100, fax 412-361-0300, gcurtis@greycourt.com, www.greycourt.com.)