

## Fiduciary Consultant



**David G. Mackenzie**

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### Resume

I retired from the Bank of America Trust Department as an Executive Vice President and Chief Fiduciary Risk Officer in 1999, after a thirty-two year career in fiduciary risk management, trust administration, marketing, sales, banking and investments, in both domestic and international assignments. My career encompassed major profit responsibility for the International Trust Group from 1984 to 1994, including marketing, sales, trust administration, and banking. During this period, I served as a Senior Vice President in London, England, and in San Francisco. From 1980 to 1984 I was the Managing Director of the Bank of America's banking subsidiary in Nassau, Bahamas.

From 1994 to my retirement in 1999, I was the Executive Vice President and Chief Fiduciary Risk Officer for the Bank responsible for all policy matters over a \$50 billion trust portfolio. In 1994, I headed the team that conducted a due diligence review of the Trust Department of Continental Illinois National Bank in Chicago. The Bank of America was purchasing that bank.

As an Executive Vice President and the senior officer responsible for all fiduciary activities, this position required extensive hands-on management of the Trust Department inherited from the 1992 merger with Security Pacific National Bank. I personally reviewed over 10,000 accounts for proper trust administration practices. I chaired or was the key member of every senior level fiduciary committee, and was the key

**member of the investment policy committee that was involved with the use of derivatives in client's accounts. All new brokerage products of a fiduciary nature needed to receive my approval.**

**In 1997 I was the featured speaker at a conference in Chicago on Fiduciary Risk Management sponsored by the Office of the Comptroller of the Currency (U. S. Department of the Treasury).**

**In 1996 The National Peoples Congress invited me to Beijing, PRC, as the only American to assist the Chinese in drafting their first ever trust law.**

**From 1964 to 1966 I was an Officer in the US Navy and served aboard the USS Finch (DER-328). I was awarded the Vietnam Service Medal, the National Defense Medal, and received a Citation for outstanding performance when a sailor was washed overboard in rough seas, by the Commander of Destroyer Escort Squadron Seven, US Seventh Fleet.**

**I have a Bachelor of Science degree in Business Administration from the University of Kansas (1964), a Masters in Business Administration degree from the University of San Francisco (1974), and a Graduate certificate from the Pacific Coast Banking School at the University of Washington (1976).**

**From March 2001 to January 2002, I served as a fiduciary consultant to the Bank of Hawaii Financial Services Group. My functions included the identification and correction of fiduciary risk policies and procedures, and the improvement of the trust administration function.**

**A listing of cases where I was retained as an Expert Witness and / or a Fiduciary Consultant follows on the attached page.**

**In 1999 retained by a large Santa Barbara, CA. law firm as a fiduciary consultant to review the conduct of two individual trustees of a \$40 million trust. This review, in part, resulted in the resignation of the trustees and the appointment of a local bank as the successor trustee. This was the result sought by both the current income beneficiary and the remaindermen of the trust.**

**After finishing my assignment in Hawaii, I have been retained as a Consultant or an Expert Witness to render opinions in the following matters:**

- (A) J. Eric May v. Wilmington Trust Company (Civil No. 19363), Court of Chancery in the State of Delaware, New Castle County. The law firm of Chemicles & Tikellis, LLP of Wilmington, Delaware retained me, in late 2002 to represents the plaintiff, J. Eric May.**
- (B) In 2003 the law firm of Glaser, Weil, Fink, Jacobs, Howard & Shapiro (Barry Fink & Amman Khan) of Los Angeles retained me on behalf of the Trustee U. S. Bank in the matter of Taubman 1990 Revocable Trust (civil case No. BP 066539) Los Angeles Superior Court, Central Division. Testified in five phases of the trial. My testimony took place from 2003 to 2009.**
- (C) In mid 2003 the law firm of Montgomery, Scarp of Seattle, WA, retained me. In the matter of Ishmiel v. Washington Mutual Bank, United States District Court for the Western District at Seattle (CV 02-1811L). Retained on behalf of the plaintiff, Gregory H. Ishmiel.**
- (D) Also in 2003, retained by the law firm of Reich, Luftman, McDaniel & Reicher of Los Angeles in the matter of The Fisher 1992 Irrevocable Trust, Superior Court for the State of California, County of Riverside, case No. INP 017804. Retained on behalf of the defendant Trustee, Dana B. Fisher, Jr**
- (E) In 2005 the law firm of Revere & Wallace of Los Angeles, CA. retained me in the matter of Dodge v. Wells Fargo Bank as Trustee in the Superior Court of Los Angeles, Case No. BC 327 577. Retained on behalf of the plaintiff beneficiaries Neil S. Dodge & Dale Dodge Matthews.**
- (F) I assisted Richard Cleary, a Los Angeles attorney in 2007 & 2008 and his client in choosing a corporate trustee in Los Angeles to act as trustee of a large family trust.**
- (G) In 2008 Aaron McKown and Paula Zecchini of the , BryanCave law firm, in Irving, CA retained me in the matter of Louis Kuelczo v. Mutual Credit Corporation, Spurling Group and the individual Trustee. Orange County case number 07CC07923. I testified at the trial as to the conduct of the individual trustee after MCC settled.**

- (H) In 2009 retained by the Memphis, Tennessee law firm of Glankler, Brown, PLLC (Larry H. Montgomery) to represent the defendant individual trustees, in the matter of Land v. Pidgeon, Shelby County, Tennessee case CH-0701770.**
- (I) In 2009 retained by the Boston law firm of Hanify & King, PC to represent Plaintiff beneficiaries in the matter of Harp vs. the Trustees Bank of America, Robert Schwartz and Gordon Swartz. Suffolk County Superior Court Civil Action No. 06-3919. I testified as to proper Trustee conduct in this Boston case**
- (J) In 2010 I was retained by the Los Angeles firm of Jeffer, Mangels, Butler & Marmoro to represent the Trustee, Union Bank of California in re Gilliland, Los Angeles Superior Court Case No. P517929. New attorneys assigned on 1-1-2013: Christopher Tayback, Quinn Emanuel, Urquhart & Sullivan, LLP**
- (K) In 2011 retained by the Fort Worth, Texas law firm of Moses, Palmer & Howell to represent the Trustee, Wells Fargo Bank. The Case No is 10-06211-M, District Court No. 298, Dallas, Texas. My opinion has been filed with the Court, deposed and testified at Trial.**
- (L) In 2011 retained by the Orange County, CA law firm of Palmieri, Tyler, Wiener, Wilhelm & Waldron to represent the Trustee, Nita Irving Wheeler Connelly in Orange County Superior Court Case N. A244771**
- (M) In 2012 retained by the Plaintiff's attorney, W. Jeffrey Sefton, of Keating, Muething & Klekamp, PLL of Cincinnati, Ohio in the matter of Reiter v. Mutual Credit Corporation, et al in Case No. CV09-811 AG (RNBX), for the U.S. District Court, Central District Court, Central District of California, Santa Ana Division.**
- (N) In 2012 retained by attorney, William N. Poorten, of Snell & Wilmer, Tucson, Arizona to defend Northern Trust Bank of Arizona in the matter of Shelby Family Trust, Pima County, Arizona Superior Court, Case No. PB2011-9890.**
- (O) In 2013 retained by James H. Brewster III and the Plaintiff's attorney, Kathy Allen, of West & Jones, Clarksburg, West Virginia. The Defendant in the Circuit Court of Ohio County, WV, Civil Action No. 69-C-401 was JPMorgan Chase Bank as Trustee for Frank L. Brewster.**
- (P) In 2013 retained by the Plaintiff's attorney, Maris Baltins, Spokane, WA in the case of Tapken v. Washington Trust Bank, Spokane, WA Superior Court Case No. 11-2-04883-1.**
- (Q) In 2014 retained by the Plaintiff's attorney Neil C. Eeickson of Jeffer Mangels Butler & Mitchell, LLP of Los Angeles in the matter of the Clark & Barbara June Carnell Trust (Wells Fargo Trust A). Superior Court of California, County of Orange, Case No. 30-2011-00448349.**
- (R) In 2015 retained by attorney, Donald G. Grant of Washougal, WA**

**on behalf of the Defendant Trustee, Thomas Craig, Clark County, Craig to render an Opinion of the reasonable level of Trustee's fees.**

**(S) Retained in 2015 by attorney Amman A. Khan of Los Angeles on behalf of the Plaintiff Trustee, Frank Sousa, to render an Opinion on reasonable attorney's compensation in the matter of the Sousa Family Trust, Case No. BP148411, Superior Court of the State of California, Los Angeles Central District.**

**[T] Retained in 2016 by attorney William K. Flynn of Strauss Troy Co. LPA, Cincinnati, Ohio rerestarting the Plaintiffs against Fifth Third Bank as Trustee of a family trust. Case #A1503152, Court of Common Pleas, Hamilton County, Ohio. I provided fiduciary consulting services in preparation for my engagement as an Expert Witness at trial.**

**May 2017.**