COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION

Trust Established Under the Deed of Edward Woolman, Settlor,
Dated 12/13/1935 for Lydia W. Shearer (Now) Wright

No. 1364 IV of 2004
Control No. 041637

#5 September 13, 2004

Sur account entitled First Account of Mellon Bank, N.A. (formerly known as Girard Trust Bank), Surviving Trustee

The account was called for audit September 13, 2004 **Before: Herron, J.**
Counsel appeared as follows:

Mark Haslam, Esquire - for the Accountant
Michelle Hong, Esquire – for the Accountant
Lawrence S. Chane – for the Accountant
Thomas Hornak, Esquire – for the Nature Conservancy
Brian McDevitt, Esquire – for Joan Glenn and Henry N. Woolman, III
Carol Ryan, Esquire – Deputy Attorney General
Samuel T. Swansen, Esquire – for Philadelphia Yearly Meeting of the Religious Society of Friends

ADJUDICATION

By deed dated December 13, 1935, Edward Woolman established an inter vivos irrevocable trust ("1935 Trust") for the benefit of his daughter, Lydia R. Woolman (also known as Lydia R. Woolman Shearer Wright). Girard Trust Company was named Trustee. The accountant, Mellon Bank, N.A., was formerly known as Girard Trust Bank but it was named in the 1935 trust document as Girard Trust Company. On August 10, 2004, Mellon filed an account of its administration of the 1935 Trust, covering the period December 16, 1935 through June 29, 2004. The reason for filing the account was the death of the income beneficiary, Lydia

R. Woolman Shearer Wright on October 14, 2002 without issue.

The dispositive provisions of the 1935 deed of trust are set forth concisely in the Petition for Adjudication and Statement of Proposed Distribution. Edward Woolman deposited with the Trustee certain securities to be held in trust, together with additional assets from time to time. The 1935 deed of trust provides that the Trustee should "hold the said assets, to collect the income therefrom, and after the payment of all proper costs and charges to pay over the net income to Grantor's daughter, Lydia R. Woolman, during her life, and upon the death of the said Lydia R. Woolman to pay the income to her children, in equal shares, during the minority of such children, and as each child shall reach the age of twenty-one years, to assign, transfer and pay over to such child his or her respective share of the principal, and if the said Lydia R. Woolman should predecease her mother leaving no issue her surviving, then to pay the income of Grantor's wife Lilian W. Woolman, during her life, and upon the death of the said Lilian W. Woolman, to assign, transfer and pay over the principal in accordance with her Last Will and Testament."[1]

The accountant raises as a question of adjudication the proper disposition of the 1935 Trust assets after the death of Lydia Woolman without leaving any surviving children. The 1935 deed of trust, the accountant notes, fails to make any provision for this eventuality. Because of this, the Accountant maintains that a resulting trust arose in favor of Edward Woolman's Estate. The accountant therefore proposes that the correct distribution of the 1935 Trust assets is to the residuary beneficiaries of Edward Woolman's Last Will and Testament, dated December 14, 1953, which would encompass Lydia's exercise of her power of

1 Article FIRST, December 13, 1935 deed of trust of Edward Woolman.

appointment that was granted under her father's 1953 Will.

The Philadelphia Yearly Meeting of the Religious Society of Friends agrees with the accountant's proposed distribution.[2] Likewise, Deputy Attorney General Carol Ryan, Esquire issued a Charitable Gift Clearance Certification, certifying that the Attorney General has no objection to confirmation of the Account, based on the facts contained in the notice.

Objections to the account were filed, however, by the Nature Conservancy. It argues that since Lydia Woolman Shearer Wright had no surviving issue, the Trust assets should be distributed to her Estate. Under Lydia's November 5, 1997 Will, her residuary estate was bequeathed to Nature Conservancy.

By decree dated September 14, 2004, the parties were ordered to file memoranda of law addressing the question for adjudication raised by the accountant. After filing their memoranda, all parties by letter from their counsel agreed that the issues raised should be decided on the briefs alone.[3]

Analysis of Question for Adjudication

The starting point for resolution of the issue posed by the accountant Mellon must be the 1935 Deed of Trust of Edward Woolman. In addition, the parties have invoked two other documents: Edward Woolman's Will dated December 14, 1953 and his daughter, Lydia's Will

2 See 9/13/2004 Entry of Appearance for The Yearly Meeting of the Religious Society of Friends of Philadelphia.
3 See Letter dated November 18, 2004 by Michelle Hong (representing Accountant Mellon Bank, N.A.); Letter dated November 23, 2004 by Brian McDevitt (representing Joan W. Glenn and Henry N. Woolman, III); Letter dated November 16, 2004 by Thomas J. Hornak (representing Nature Conservancy). By letter dated May 4, 2005, counsel for Mellon advised this court that due to a potential conflict, Morgan, Lewis & Bockius, LLP was withdrawing its appearance. Lawrence Chane, by letter dated June 8, 2005, subsequently informed this court that the firm of Blank Rome LLP had entered its appearance for Mellon and that it agreed that the issues should be resolved on the briefs previously filed.

dated November 5, 1997.[4] By his 1935 deed of trust, Edward Woolman instructed his Trustee to administer the assets of that irrevocable[5] Trust as follows:

> FIRST: To hold the said assets, to collect the income therefrom, and after the payment of all proper costs and charges to pay over the net income to Grantor's daughter, Lydia R. Woolman, during her life, and upon the death of the said Lydia R. Woolman to pay the income to her children, in equal shares, during the minority of such children, and as each child shall reach the age of twenty-one years, to assign, transfer and pay over to such child his or her respective share of principal, and if the said Lydia R. Woolman should predecease her mother leaving no issue her surviving, then to pay the income to Grantor's wife, Lilian W. Woolman, during her life, and upon the death of the said Lilian W. Woolman, to assign, transfer, and pay over the principal in accordance with her Last Will and Testament.
> Article FIRST, 1935 deed of trust of Edward Woolman

As all the parties concede, this provision of the 1935 deed of trust does not set forth a proposed distribution in the eventuality that Lydia survives her mother but then subsequently dies without leaving any issue.

Several decades later, Edward Woolman executed a Will dated December 14, 1953. In article ELEVEN of that Will, he created two trusts: Trust A to pay income commencing at the testator's death to his wife, Lilian, during her lifetime, with a power of appointment over to Lilian, and; Trust B consisting of the residue of Woolman's estate, to pay at the testator's death $25.00 each month to Dorothy Sharkey and the net income to testator's wife, and then upon her death, to pay the entire net income to testator's daughter Lydia. Article ELEVEN of this Will set forth the following provisions for the distribution of the principal of Trust B:

> (d) Upon the death of the survivor of my wife and my daughter, the entire corpus or principal comprising the trusts by this my Will created, excepting so much as may be

4 In their memorandum, Joan Glenn and Henry Woolman, III, also invoke a second deed of trust Edward Woolman executed in 1935, which they characterize as "Trust A." See 10/13/2004 Memorandum of Joan Glenn and Henry Woolman, III, at 13-14 (arguing that the designated distribution for Trust A reflects the settlor's intent for the distribution of Trust B to the closest living relatives, Joan Glen and Henry Woolman, III). Although this other 1935 Trust is referenced in Lydia's 1997 Will, it was not attached to any of the filings as a part of the record.

5 In Article FIFTH, Edward Woolman provided that "the Trust hereby created shall be Irrevocable."

required to continue the payments to Dorothy A. Sharkey should she then be living, Trustees shall pay over and distribute to the child, children or issue of my daughter, Lydia Woolman Shearer, absolutely and per stirpes.
Article ELEVEN(B)(d) of the December 14, 1953 Will of Edward Woolman

In contrast to his 1935 deed of trust, in his 1953 Will Edward Woolman does provide for the possibility that his daughter Lydia might die without issue. In such a case, he proposes the following distribution:

(e) Should my daughter die not leaving child, children or issue, one-third of the principal or corpus comprising the Trusts hereby created shall be paid over and divided in such manner and in such proportions, and to such person, persons, or corporations as my said daughter, Lydia Woolman Shearer, shall by her last Will and Testament direct, limit and appoint; and if she shall have failed to exercise such power of appointment, then to pay over and distribute the said one-third of the principal or corpus to The Corporation of Haverford College, Haverford, Pennsylvania, absolutely.

One-third of the said principal or corpus comprising the Trust hereby created shall paid and distributed to The Corporation of Haverford College, Haverford, Pennsylvania, without restriction, for the general purposes of said college.

One-third of the said principal or corpus comprising the Trust hereby created shall be paid and distributed to the Yearly Meeting of the Religious Society of Friends of Philadelphia, for the general purposes of that body.
Article ELEVEN (B)(e) of the December 14, 1953 Will of Edward Woolman

On March 11, 1960, Edward Woolman died. His wife, Lilian, died on January 27, 1968.[6] Their daughter, Lydia, survived both of her parents and inherited her mother's entire estate[7] but she died on October 14, 2002 without issue. Prior to her death, Lydia had executed a Will dated November 5, 1997. In that Will, Lydia provided:

My probate estate will be augmented upon my death by my vested remainder (through the estates of my mother and maternal grandmother) in all of the assets held in the trust under the will of my grandfather, HORACE WHITMAN, and it is my intention to dispose of such property by my Will.[8]

6 10/13/2004 Memorandum of Joan Glenn and Henry Woolman, III at 14.
7 Accountant's 10/13/2004 Memorandum at 2.
8 Introductory Second Paragraph, November 5, 1997 Will of Lydia Woolman Wright

The only reference to the assets bestowed on Lydia specifically by her father, appear in Section SECOND relating to the exercise of powers of appointment. In this section, Lydia provided:

> A. Under Paragraph ELEVENTH (B)(e) of the will of my beloved father, EDWARD WOOLMAN, I have a power of appointment. I hereby exercise said power of appointment and direct that, subject to Section TENTH hereof, the principal over which I have such power of appointment be paid in equal shares to such of HENRY N. WOOLMAN, III and JOAN W. GLENN who survive me, or all to the survivor of them, if only one of them survives me; provided however, that if either of them does not survive me but leaves issue who survive me, such issue shall take, per stirpes, his or her parent's share.
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> Section SECOND, (A), November 5, 1997 Will of Lydia Woolman Wright

Mellon Bank, as accountant, references all three of these documents in explaining its proposed distribution in light of the gap in the 1935 deed of trust as to the disposition of trust assets in the event that Lydia was not survived by heirs.[9] In light of these interconnected provisions, the Accountant takes the position that due to the failure of the 1935 deed of trust to provide for the possibility that Lydia might die without issue, a resulting trust arose so that the assets of the 1935 Trust reverted back to the Estate of the Settlor, Edward Woolman. Hence, those assets would pass under his 1953 Will, which provides for the exercise of Lydia's power of appointment as to one-third of those assets. Mellon therefore recommends the following distribution: one-sixth to Henry Woolman, III ; one- sixth to Joan Glenn (each pursuant to Lydia's power of appointment) and 1/3 to the Corporation of Haverford College and 1/3 to Religious Society of Friends. [10]

The Nature Conservancy objects to this proposed distribution. It argues that Edward Woolman, by creating an irrevocable inter vivos trust did not intend for those assets in the 1935

9 See, e.g., Mellon's Petition for Adjudication and Statement of Proposed Distribution, Rider to Paragraph 9.
10 Accountant's 10/13/2004 Memorandum at 2-3.

Trust to revert back to his estate. Rather, the Nature Conservancy invokes 20 Pa.C.S.§ 6102 which gives a court the authority to terminate a trust when its purpose fails. It argues that under section 6102 this "court has the ability to modify the trust in accordance with Settlor's intent and allow for Lydia Woolman, the income beneficiary under the Trust instrument, to obtain a vested interest in the remainder and to dispose of her interest in this Trust through her Last Will and Testament."[11] The Nature Conservancy, as the residuary beneficiary under Lydia's Will, thereby asserts its claim to the 1935 Trust assets. The Nature Conservancy's claim is untenable, however, because even if a resulting trust did not arise, the settlor's intent would still control under section 6102. Either analysis would support the accountant's proposed distribution.

All the parties agree that Edward Woolman in his 1935 Trust failed to provide for the distribution of assets in the eventuality that his daughter, Lydia, survived her mother Lilian, but died without issue. This issue was recently addressed by Judge Drayer in Willing Trust, 23 Fid. Rep. 2d 276 (Mont. Cty. O.C. 2003). In Willing, the court was asked to approve an account of an irrevocable trust where the deed of trust likewise failed to provide for the eventuality that the beneficiary might die without issue. The deed of trust in Willing provided that trust income should be paid to the settlor's daughter for life, and upon her death to her issue.[12] The daughter died without issue and no other remainder beneficiary was named. The trustee proposed that since the trust had no provisions for a remainder beneficiary, the assets should be held by the trustee as a resulting trust in favor of the settlor or his estate. The daughter's estate objected to this proposal and

11 Nature Conservancy's 10/13/2004 Memorandum at 4.

12 The Willing Trust further provided that it would continue for 21 years after the death of the settlor's daughter, at which point it would terminate, with principal distributed to the daughter's issue. It also provided "that in the event of a complete failure of my issue during my lifetime, this trust shall immediately terminate and the entire principal thereof and any undistributed income therefrom shall be paid over time." Willing, 23 Fid. Rep. 2d at 277. This provision was inapplicable since the settlor's daughter survived her.

argued, instead, that the trust assets should be distributed to the daughter's estate.

On these facts, Judge Drayer agreed with that accountant that a resulting trust arose. He supported this conclusion by emphasizing that the "three (3) preeminent American authorities on trust are in agreement that, in the event of the failure of a trust, the principal of the trust is held as a resulting trust by the trustee in favor of the settlor or his estate." Willing Trust, 23 Fid. Rep. 2d at 278 (quoting Restatement (Second) of Trusts, § 411 (1959); 5 Austin W. Scott & William F. Fratcher, The Law of Trusts, § 411 (4th Ed. 1989); George Bogert & George T. Bogert, The Law of Trustees, § 468 (2d rev. ed. 1991)).

Section 411 of the Restatement (Second) of Trusts, (4th. Ed. 2001) more specifically provides:

> If an owner of property transfers it inter vivos upon a trust that fails either at the outset or subsequently, and he has not indicated what disposition should be made of the property in the event of the failure of the trust, the trustee cannot retain it but will be compelled in equity to restore it to the settlor. In such a case the trustee holds the property upon a resulting trust for the settlor. Since the trustee was not intended to have the beneficial interest, and since the beneficial interest was not otherwise disposed of, it reverts or results to the settlor On the failure of the trust, the court will put the parties in *statu quo* by restoring the property to the settlor. But if the settlor properly manifested an intention that no resulting trust should arise in the event of the failure of the trust, it will not arise, but the property will be disposed of in accordance with his intention, whether that intention is expressed in specific language or not.

Pennsylvania courts have likewise imposed resulting trusts in other situations where an express trust failed.[13] In Galford v. Burkhouse, 330 Pa. Super. 21, 478 A.2d 1328, 1333 (1984), for instance, the Superior Court concluded that when "an express trust fails, a resulting trust may be imposed by operation of law" in a case where an oral trust relating to real estate would

13 In Jackson Trust, 351 Pa. 89, 92, 40 A.2d 393, 395 (1945), the Pennsylvania Supreme Court stated that where an irrevocable trust indenture provides only for a distribution of income for a life estate and fails to provide for a disposition of principal, "[h]ad nothing more been done by Jackson [the settlor], a resulting trust for the benefit of the settlor or his heirs would have resulted as an operation of law."

otherwise have been invalid under the statute of frauds. In Borden v. Baldwin, 444 Pa. 577, 281 A.2d 892 (1971), the Pennsylvania Supreme Court found that a resulting trust arose on behalf of a hunting club where otherwise its attempt to withdraw principal from an account it established was invalid. Finally, in Smith Estate, 435 Pa. 258, 256 A.2d 130 (1969), the Supreme Court found a resulting trust where otherwise a charitable trust would have failed.

The Nature Conservancy disagrees with this invocation of a resulting trust, since it argues that a resulting trust cannot arise where the settlor has evinced an intention that no such trust should arise.[14] Edward Woolman manifested just such an intent, objector Natural Conservancy argues, when he made the 1935 Trust irrevocable. This argument is not convincing, however, since the trust in the Willing Trust case was also irrevocable[15] and presented no impediment to the arising of a resulting trust. The critical issue is not whether the settlor intended an irrevocable trust, but whether he failed to provide for the disposition of trust assets.

The Nature Conservancy also asserts that under Section 6102 of the PEF code this court should declare the 1935 Trust terminated because of its failure to achieve its purpose, so that its assets can now be distributed through Lydia's estate. This suggestion is untenable for two reasons. First, it is not clear that Section 6102 is applicable to the facts of this case. Second, even under section 6102, the intent of the settlor would still control, requiring that the assets be distributed as the accountant proposes.

Section 6102 of the PEF Code provides for the termination of trusts upon a "failure of

14 The Nature Conservancy cites, inter alia, Amour Estate, 154 A.2d 502 (1959) to support its argument that a resulting trust would not arise because Woolman's 1935 was irrevocable. 10/13/2004 Nature Conservancy Memorandum at 4. The facts of Amour, however, are readily distinguishable. Amour dealt with a joint savings account where the signature cared stated that the survivor of the depositors should be considered the absolute owner of the account; it did not deal with a trust that failed to provide for disposition of assets in the event that a beneficiary died without heirs.

original purpose." As Joan Glenn and Henry Woolman, III, note in their memorandum there is some doubt as to its applicability in the instant case since an historical note to section 6102 states that a 1982 amendment to section 6102(a) "shall take effect immediately and shall apply to the estates of all decedents dying on or after the effective date [February 18, 1982]." Historical Note, 20 Pa.C.S.A. § 6102 (Purdon's 2005 Supp.). Edward Woolman died nearly 20 years prior to this effective date.

Moreover, even if this historical note does not affect the applicability of Section 6102 to the 1935 Trust, Mellon's proposed distribution would still be appropriate under 6102 because it would be most consistent with the settlor's intent.

Section 6102 sets forth the following provisions for the termination of trusts:

> **(a) Failure of original purpose -** The court having jurisdiction of a trust heretofore or hereafter created, regardless of any spendthrift or similar provision therein, in its discretion may terminate such trust in whole or in part, or make an allowance from principal to one or more beneficiaries provided the court after hearing is satisfied that the original purpose of the conveyor cannot be carried out or is impractical of fulfillment and that the termination, partial termination or allowance more nearly approximates the intention of the conveyor, and notice is given to all parties in interest or to their duly appointed fiduciaries.
> 20 Pa.C.S.A. § 6102(a).

By its terms, therefore, Section 6102 is discretionary rather than mandatory. It gives the court "discretion" to terminate a trust "provided the court after hearing is satisfied that the original purpose of the conveyor cannot be carried out or is impractical of fulfillment" and that such a termination "more nearly approximates the intention of the conveyor." 20 Pa.C.S.§ 6192(a). If a court decides that a trust should be terminated, "it shall thereupon order such distribution of the principal and undistributed income as it deems proper and as nearly as possible in conformity of the conveyor's intention." 20 Pa.C.S. §6102(b)(emphasis added).

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15 See Willing, 23 Fid. Rep. 2d at 277 ("Paragraph Tenth provides that the trust is irrevocable").

Although section 6102 provides for a hearing to determine whether the settlor's original intention cannot be carried out, as previously noted, the parties have waived a hearing and requested that the issue be resolved on their memoranda. In analyzing the relevant documents under section 6102, the primary focus must be on the settlor's intent. This accords with the general principles for analyzing trusts and wills.

It is well established that in "interpreting a trust instrument, the intent of the settlor is paramount, and if the intent is not unlawful, it must prevail." Trust Agreement of Jones, 414 Pa. Super. 361, 367, 607 A.2d 265, 267 (1992). To determine this intent, it is necessary to examine the language of the deed of trust, its scheme of distribution, as well as "the facts and circumstances existing at the creation of the trust. Id. Technical rules or canons of interpretation are considered only when the language of the document is unclear. The same rules for determining the settlor's intent applies to trusts and wills. In re: Trust of Hirth, 2003 Pa. Super. 287, 832 A.2d 438, 448 (2003).

While it is undisputed that Edward Woolman in his 1935 deed of trust failed to express his intent as to the distribution of the assets in the event that his daughter Lydia was not survived by issue, he did address that possibility in his 1953 Will. There he provided that one-third of the principal of the trusts in the will should be distributed after Lydia's death without issue pursuant to Lydia's exercise of her power of appointment, with the remaining two-thirds to be distributed to the Corporation of Haverford College and the Yearly Meeting of the Religious Society of Friends in Philadelphia.[16]

Similarly, in her own 1997 Will, Lydia clearly exercised the power of appointment granted

16 Article ELEVENTH (B)(e), December 14, 1953 Will of Edward Woolman.

to her under her father's will and expressed the intention to benefit Joan Glenn and Henry Woolman.[17] Although the Nature Conservancy argues that as the residuary beneficiary under Lydia's death, the assets from Edward Woolman's inter vivos 1935 trust should flow to it, an analysis of Lydia's 1997 Will does not support this claim. In the Introductory paragraph of her Will, for instance, Lydia outlined the parameters of the estate—and by default of the residuary estate--that she was passing by her 1997 Will. Accordingly, she stated that her 'Probate estate will be augmented upon my death by my vested remainder (through the estates of my mother and maternal grandmother) in all of the assets held in the trust under the Will of my grandfather, HORACE WHITMAN, and it is my intention to dispose of such property by my Will."[18] Significantly lacking from this recital is any mention of the Trusts created on Lydia's behalf by her father that might therefore pass generally through Lydia's residuary estate under her 1997 Will as the Nature Conservancy advocates. Lydia does, however, specifically invoke the trusts created by her father when she clearly expresses

her intent to exercise her power of appointment as to those trusts to benefit Joan Glenn and Henry Woolman, III.[19]

The authority and cases cited by the Nature Conservancy to support the invocation of section 6102 on its behalf are also unpersuasive. It emphasizes, for instance, that the Official Comment-1980 provides that Section 6102(b) is "required to eliminate the possible claim that the trust, upon failure of its original purpose, reverts to the settlor or to the settlor's or testator's estate." This Comment, however, must be read in conjunction with the provisions of Section 6102 which makes the settlor's intent the polestar for determining the distribution of assets upon the failure of the 1935

17 See Section SECOND, A, November 5, 1997 Will of Lydia Woolman Wright.

Trust's original purpose. In the instant case, the accountant provided compelling documentation of the intent of both the settlor, Edward Woolman, and of his intended beneficiary, Lydia, as to the disposition of the trust assets in accordance with Mellon's proposed distribution.

The Nature Conservancy also invokes a series of cases in which courts have terminated trusts to favor the income beneficiaries where there is no possibility of the birth of any children as provided for in the trust document. See, e.g., Bonham Estate, 393 Pa. 355, 143 A.2d 50 (1958); Barnsley Estate, 59 Pa. D & C 653(Monty Cty. 1947); Lare's Estate, 57 Pa. D & C 163 (Monty. Cty. 1946). These cases are distinguishable, however, since in each one, an aged income beneficiary petitioned the court to terminate a trust so that she might benefit and receive the remaining principal since there could be no other issue to inherit it. In those cases, the court agreed to terminate the trust and distribute its principal to the remaining aged income beneficiary where it was clear that she could not have any children due to her advanced age. In the instant case, in contrast, the income beneficiary is deceased, and thus is not capable of personally enjoying the benefits of her father's Trust.

Equally inapposite is the Estate of Blough, 474 Pa. 177, 378 A.2d 276 (1977), which the Nature Conservancy characterizes as an example of the termination of trust "where a daughter was the income beneficiary to a trust with remainder to the children of daughter, and where the daughter's only child predeceased her, the life estate of the trust and its remainder interest merged thereby justifying the termination of the trust and giving the vested right of the remainder to daughter."[20] As this quote suggests, the facts of Blough are quite complicated and specific, and thus of limited applicability to the present case. It should suffice to note that the remainder interests

18 See Introductory Second Paragraph, November 5, 1997 Will of Lydia Woolman Wright.

in the trust at issue in Blough were ultimately deemed to pass to the income beneficiary because of a specific provision in the will of the income beneficiary's deceased daughter. In the instant case, in contrast, Lydia, the deceased income beneficiary of her father's 1935 trust, through her will expressed the intent to exercise the power of appointment granted to her by her father to benefit Henry Woolman, III and Joan Glenn.

Henry Woolman, III and Joan Glenn filed a memorandum that appears to agree with the accountant's proposed distribution. They likewise agree with the accountant that a resulting trust arose due to the failure of the 1935 Trust to provide for the eventuality that Lydia might die without heirs. In addition, however, they propose an alternative approach under section 6102 under which they invoke a second Trust (Trust "A") established by Edward Woolman in 1935.[21] This second approach, however, is speculative and unclear.[22] Consequently, for all of the reasons stated above, this court agrees with the accountant's proposed distribution and overrules the objections of the Nature Conservancy.

According to the accountant, written notice of the audit has been given to all parties of interest. It further states that no Pennsylvania transfer inheritance tax and estate tax is due. The account shows a balance of principal before distribution in the amount of $315,046.26

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19 See Section SECOND, A & B, November 5, 1997 Will of Lydia Woolman Wright.
20 10/13/2004 Nature Conservancy Memorandum at 8.
21 10/13/2004 Memorandum of Joan Glenn and Henry Woolman, III, at 1-2, 4-10.
22 Under this alternative approach, Henry Woolman III and Joan Glenn invoke a second trust (which they characterize as "Trust A") that Edward Woolman created in 1935. This trust designated Lilian as the initial income beneficiary, and then her daughter, Lydia. This trust A, according to Ms. Glenn and Mr. Woolman, bestowed a power of appointment on Lydia, which she exercised on behalf of Joan Glenn and Henry Woolman in her 1997 Will. These two beneficiaries argue that Edward Woolman would have preferred the trust assets that are subject to the instant trust (i.e. Trust B) to follow the pattern of Trust A, which benefited the children of Woolman's relatives, Joan Glenn and Henry Woolman. Unfortunately, a copy of this Trust A was not affixed to support this interpretation. Moreover, this approach seems a sub silentio suggestion that additional text be added to the 1935 Trust to give Lydia an explicit power of appointment. See 10/13/2004 Memorandum of Joan Glenn and Henry Woolman, III at 13-15.

and a balance of income before distribution of $330,422.04 for a total of $645,468.30. This sum, composed as stated in the account, plus income received since the filing therof, subject to distributions already properly made, subject to any transfer inheritance tax which may be due and assessed is awarded as set forth in the accountant's proposed statement of distribution:

Income	**Amount/Proportion**
Henry N. Woolman, III	1/6
Joan W. Glenn	1/6
The Corporation of Haverford College	1/3
The Yearly Meeting of the Religious Society of Friends of Philadelphia	1/3

Principal	
Henry N. Woolman, III	1/6
Joan W. Glenn	1/6
The Corporation of Haverford College	1/3
The Yearly Meeting of the Religious Society of Friends of Philadelphia	1/3

A schedule of distribution, containing all certifications required by Phila. O.C. Rule 6.11.A(2) and 6.11.A(6)(b) shall be filed within ninety (90) days of absolute confirmation of the account.

Leave is hereby granted to the accountants to make all transfers and assignments necessary to effect distribution in accordance with this adjudication.

AND NOW, this _____ day of OCTOBER 2005, the account is confirmed absolutely.

Exceptions to this Adjudication may be filed within twenty (20) days from the date of the

issuance of the Adjudication. An Appeal from this Adjudication may be taken to the appropriate Appellate Court within thirty (30) days from the issuance of the Adjudication. See Phila. O.C. Rule 7.1A and Pa. O.C. Rule 7.1 as amended, and Pa.R.A.P. 902 and 903.

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John W. Herron, J.