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LR 84

that's...that does seem to be the effect of this. It's presumed that if the settlor was represented by independent counsel, that that independent counsel would have read and would have considered that particular term or phrase in the trust, and that basically the settlor in that case would rely on the advice and counsel of his own attorney rather than that...rather than the trust account at a bank, or something like that.

SENATOR BEUTLER: So if something went wrong with respect to an act of negligence on the part of the trustee, but there was an exculpatory clause that was clearly the wrong thing to do in that situation, then it would be left with a settlor or his heirs to file an action against the attorney for malpractice or whatever? That would take the bank out of it, is that what's intended with this?

SENATOR QUANDAHL: Well, I don't know if it would take the bank out of it. But let me...I just was handed the...some of the reasoning behind that amendment. This amendment makes clear in statute what's stated in the official comment to the Uniform Trust Code, Section 1008. And that says, and I'll quote, "If the settlor was represented by independent counsel, the settlor's attorney is considered the drafter of the instrument even if the attorney used..."

SENATOR CUDABACK: One minute.

SENATOR QUANDAHL: "...the trustee's form." That amendment was recommended by the LR 84 interim study, by the study group. So...

SENATOR BEUTLER: Is that directly from the Uniform Code?

SENATOR QUANDAHL: It is not directly from the Uniform Code; it's from the comments to the Uniform Code.

SENATOR BEUTLER: So this wasn't recommended by the national Uniform Code people? Or it was recommended?

SENATOR QUANDAHL: Yes, actually it was. Yes, actually it was.