

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 18, 2004 LB 999

independent legal counsel?

SENATOR QUANDAHL: I guess from the situation that you put forth there I would say no, he has not been represented by independent legal counsel. Because if it is a person without knowledge or experience in that area, that being trust law, which is admittedly a fairly complicated and fairly specific area of trust law, if he didn't actually look at it, if he didn't actually render an opinion based on existing laws or the statutes, then I would say no, he hadn't been representative. Now, if the settlor, you later got a bill from that...from John Jones the divorce lawyer, now you may have something to argue about there too. But it doesn't sound like...

SENATOR BEUTLER: Well, I'm trying to see if responsibility is fixed someplace with respect to this exculpatory clause. Because as you know, exculpatory clauses are one of the more disfavored items in the law, because they essentially allow a person to get off from what we would otherwise might consider negligence. So if there is negligence involved in a situation, it would seem to me that we would want clearly to have the responsibility somewhere. And if the purpose of this clause is to clearly shift that responsibility away from the trust company, does it clearly shift it onto the lawyer? I guess that's my question, Senator. Somehow I didn't think there was anything wrong with the existing law, which says that the trustee can put in an exculpatory clause, and all he has to do is prove it's fair under the circumstances, and that it was adequately...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...communicated to the settlor. I suppose we're presuming that the lawyer adequately communicates it to the settlor. Is that correct?

SENATOR QUANDAHL: I think that that would have to be a presumption. Actually, committee counsel, Bill Marienau, said that, you know, a provision such as this...this was included in here, he's reminding me now, because of the comments made by the uniform law commissioners that we talked about earlier. But our