|  |  |  |
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| ,  Plaintiff,  vs.  ,  Defendant | )  )  )  )  )  )  )  )  )  ) | Case No.: |

Dated this

**IN THE THIRTEENTH JUDICIAL CIRCUIT COURT**

**IN AND FOR TRAVIS COUNTY, TEXAS**

Case No. 2012-123

Judge Benchpounder

ALAN L. HAMILTON, as Executor and a beneficiary for the Maurine P Hamilton Estate/Trust,

Plaintiff,

v.

MUTUAL OF OMAHA (large company with Errors and Omissions Insurance),

DANNY DAVILA (owns many homes, Errors and Omissions Insurance),

BRAD SEALS (owns many homes, Errors and Omissions Insurance),

SYLVIA HAMILTON (owns a home),

??? questionable additions below

WAYNE GRONQUIST(??? Supposedly dead in Costa Rica, but wanted to cover this up),

Gina Andro(???, a “gypsy-psychic-con-artist” flight risk, currently residing in Las Vegas, Nevada with Houston connection, possible houses in Las Vegas)

Defendants.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_/

**Draft edit notes:** Elements of Cause in green, Evidence/Exhibit/Witness reference in red, purple is the simplest case against Danny Davila, leftover example lawsuit cause skeletons from www.jurisdictionary.com in grey (for future draft reference)

**COMPLAINT**

PLAINTIFF Alan L. Hamilton sues defendant Mutual of Omaha et al for money damages and states:

JURISDICTIONAL ALLEGATIONS AND VENUE

1. This is an action for money damages in excess of $15,000.
2. At all times material to this lawsuit, Alan Hamilton was a resident of Travis County, Texas.
3. At all times material to this lawsuit, Sylvia Hamilton, Danny Davila and Brad Seals were residents of Travis County and/or Williamson County. Mutual of Omaha is in Omaha, Nebraska and is licensed to do business in the State of Texas.
4. All acts necessary or precedent to the bringing of this lawsuit occurred or accrued in Travis and or Williamson County, Texas.
5. This Court has jurisdiction. (??? – crosses state lines)

SUMMARY OF THE ACTION

Due to Breach of Fiduciaty Duty, negligence, tortious interference and fraud, two Professionals and a large systemically important insurance company, assisted a single beneficiary in embezzling the annuities and bank accounts of a little old lady whose husband had just died. Whether the two Professionals, an experienced Probate/Estate attorney and a CPA and the insurance company did this intentionally or out of neglect, does not change the fact, that had standard and ordinary care been exercised, with the demand of a Letter of Release of Responsibility from the second named beneficiary, the embezzlement and death under suspicious circumstances of the little old lady, would have been prevented.

THE PLAINTIFF

Alan Hamilton, Executor/Trustee of the Alfred and Maurine P. Hamilton Estate/Trust and one of two beneficiaries of the Trust.

THE DEFENDENTS

1. Sylvia Hamilton, one of two beneficiaries of the Alfred and Maurine P. Hamilton Estate/Trust
2. Brad Seals, Probate and Estate attorney for many years
3. Danny Davila, CPA/PFS, (Personal Financial Specialist) for many years
4. Mutual of Omaha, Annuity and Insurance Company
5. Wayne Gronquist, Probate and Estate attorney for many years, supposedly died in Costa Rica in Nov 2010, in the middle of a few investigations of missing money.
6. Gina Andro, the “psychic” woman who Sylvia Hamilton says she sent the money to in Las Vegas, Nevada , via Western Union in less than $10,000 amounts.

GENERAL FACTUAL ALLEGATIONS

1. On April 8, 2004, the day of Alfred Hamilton’s death, the value of the Estate $1 million dollars, with a projected value of $2 million dollars in 2018, when the $800,000 in Mutual of Omaha annuities matured, plus about $400,000 in bank accounts. See Exhibit Z2 (Annuities and IRS 1099s for bank account interest).
2. On June 7, 2004, Brad Seals sent Danny Davila an email, describing the bank and insurance work he was doing for Sylvia and Maurine Hamilton and that Mr Davila assistance was needed to calculate the amount of the Annuities and Life Insurance left to Maurine Hamilton by her recently deceased husband Brad Seals expressed in the email the question of whether probate court could be avoided, - and the Will or the Trust apparently. (See Exhibit 1: email from Brad Seals to Danny Davila)
3. Dorothy Milek was the family accountant for Maurine Hamilton for years, as long as anyone can remember. All the family members taxes were Dorothy Milek for years.
4. In July 2004, Danny Davila did the only year of taxes (2003 taxes) he ever did for the Hamilton Family until taxes were demanded by Alan Hamilton’s Probate attorney Wayne Gronquist via Marjorie Miller written request to Sylvia Hamilton. The taxes showed $5000/month in Veteran’s income and a total income of \_\_\_\_\_\_\_, and 1099’s with the name of the Hamilton Trust on it as well as property tax receipts with the name of the Hamilton Trust on it. And yet, Danny Davila did not inquire into the Trust or take care of the Trust and it’s beneficiaries.
5. On August 6, 2004, Sylvia Hamilton, and supposedly Maurine Hamilton, and Defendant entered into a written Durable Power of Attorney agreement. A copy of the agreement is attached and labeled, (Exhibit 2: 1/12/2009 packet from Mutual of Omaha). This was received from Mutual of Omaha, as a packet explaining what happened to the annuities, on Jan 12, 2009. Danny Davila and Sylvia Hamilton had made no mention of this new DPOA to Alan Hamilton, as a beneficiary or when he became the new Executor/Trustee in Oct 2008.
6. The agreement was supposedly executed at Danny Davila’s office with a Notary Public present. Yet Sylvia Hamilton said it was done at her home. Maybe leave this out and bring up at deposition. (???)
7. There was another DPOA on file with the Travis County Clerk’s Office which required 2 physicians certifications or a court order to become effective and put limitations of the Fiduciary Agent to put investments into the Hamilton Trust, not take them out. Sylvia Hamilton was already named the first successor agent after Maurine Hamilton. There was no need for a new DPOA except to escape the terms of the recorded DPOA for disability certification and special instructions for the Hamilton Family Trust. (see Exhibit 1996-DPOA)
8. Terms of the DPOA written agreement required Defendant Danny Davila to perform the Fiduciary Duties of the Estate if Sylvia Hamilton did not. (Exhibit 2S-Danny Davila successor agent page only)
9. The Fiduciary Duties of the Estate included managing the investments and keeping beneficiaries informed with annual accountings of the Estate.
10. The Fiduciary Duties of the Estate included doing the taxes and sending annual K1 tax filings to the beneficiaries.
11. No Trust tax K-1s or Trust Annual Accounting Reports was ever sent to Alan Hamilton by Danny Davila, though he requested them from both Sylvia Hamilton and Danny Davila.
12. On October 8, 2004, Danny Davila wrote a letter to Mutual of Omaha for Sylvia Hamilton, who at that time was the official DPOA of the estate, saying that Maurine Hamilton was angry with her Mutual of Omaha agent she had been working with for years of investments, and that he would contact the Texas Department of Insurance for “pressuring the clients Mr and Ms Hamilton, to buy numerous annuities with the same company.” , if they did not hand over ALL the money to a single beneficiary/caretaker of Ms Hamilton, rather than earn an average of 5%/per year, with 10% deductible per year, on $800,000, because Danny Davila told Alan Hamilton “his mother was broke and needed the money.”, on Sept 11, 2008. Alan Hamilton was not given a copy of this letter by Danny Davila or Sylvia Hamilton, when he requested the records in Sept 2008 and many times afterwards, until he received the package from Mutual of Omaha in the mail on Jan 12, 2009. (see Exhibit 2: 1/12/2009 packet from Mutual of Omaha).
13. In June/July 2004, Danny Davila actually knew that Maurine Hamilton had just received $315,000 from Alfred Hamilton’s death/insurance policies, and was not “broke” at all. Indeed, in the 6/7/2004 email from Brad Seals he is requested to help with the insurance company computations after the death of Alfred Hamilton.
14. It can be shown that the Mutual of Omaha annuities were transferred from other annuities companies in the early 2000s in order to consolidate the investments with a single large “too big to fail” company, for the planned long-term maturation of the annuities in 2017 for the Hamilton Family children’s retirement. (see Annuities spreadsheet at www.ProBaitCourt.com)
15. Though they knew the husband had just died, neither Brad Seals or Danny Davila consulted or followed the written requests of Will and Trust documents of the Estate. (see Wills and Trusts at www.ProBaitCourt.com)
16. After the death of a spouse, Grantor Trusts become Irrevocable Trusts. The Hamilton Trust had become irrevocable after the death of Alfred Hamilton. Brad Seals and Danny Davila are Estate/Trust professionals and were aware of the recent death of Alfred Hamilton. (see Exhibit 1: email Brad Seals to Danny Davila)
17. Danny Davila did the taxes in 2003 taxes in approximately July 2004, between the 6/7/2004 email from Brad Seals and the 8/6/2004 DPOA. In those tax records, the Trust is mentioned on several documents and 1099s. Danny Davila could not have been unaware of the existence of a Hamilton Trust. (see Exhibit 5: 2003 taxes BofA 1099)
18. Mutual of Omaha did not exercise the ordinary care or due diligence in releasing $439,000 in annuities to a single beneficiary under suspicious circumstances and the second beneficiaries spelled wrong. Had Mutual of Omaha demanded a letter of release from Alan Hamilton, this would have prevented the embezzlement of the annuities from the Hamilton Estate/trust.
19. Mutual of Omaha sent a letter to Maurine Hamilton on August 9, 2004, informing her and expressing concern that Sylvia Hamilton and Danny Davila had contacted her about her annuities without her being present. Mutual of Omaha had a suspicion of fraud and yet still released the money to Sylvia Hamilton with no simple letter of release from Alan Hamilton confirming fraud was not taking place. (See Exhibit 12: 8/9/2004 Mutual of Omaha letter)
20. Mutual of Omaha sent a letter to Maurine Hamilton on sept/oct ??? 2004, show-casing how ridiculous is was that Maurine Hamilton would want to withdraw all her annuities, especially since her records showed she knew how to do partial withdrawals. And yet still, Mutual of Omaha did not ask for a letter of release from Alan Hamilton, whose name had been spelled wrong on the DPOA, by his signed by his mother supposedly. Mutual of Omaha suspected fraud and released the money without ordinary care. (see Exhibit 13: Oct 2004 Mutual of Omaha letter)
21. Sylvia Hamilton did not do the taxes after 2003 (done in July 2004), and Danny Davila filed extensions for 2004 (in April 2005) and 2005 (in April 2006) years until Alan Hamilton finally got a lawyer in August 2008, Wayne Gronquist, to demand that the taxes be done, and then was told by Sylvia Hamilton that she had stolen the annuities from the Estate. She also stole hundreds of thousands in bank accountants.
22. Alan Hamilton called Danny Davila in 2005 and asked about the Estate, and Danny Davila told him he hadn’t spoken with Sylvia or Maurine for a couple of years, and knew nothing about what was going on. At the same time, Danny Davila filed a 2004 and 2005 IRS extensions for Sylvia Hamilton (see Exhibit 3: Danny Davila’s Hamilton Billing records) who now supposedly had DPOA of the Estate, had refused to give Alan Hamilton any information on the Estate, not even the K1 tax filing he needed in order to file his taxes, as a beneficiary of the Irrevocable Estate.
23. The following documents are in Danny Davila’s handwriting, and show evidence of his knowledge of Alan, his misspelling of Alan as “Allan” and his discussion of a different investment strategy which would double the money tax-free. Danny Davila was trying to make the money off the annuities that Brad Seals had alluded to in the email with the re-investment of the money and the commissions. Unfortunately, Sylvia Hamilton never returned with the money, beating Danny Davila at his screw the elderly game, and leaving him in a bad predicament he’d rather cover up with fraudulent taxes. (Exhibit Danny’s hand-writing on $315,000 payment letter with Alan’s name spelled “Allan” in Danny’s handwriting.
24. On Sept 11, 2008, Alan Hamilton and Marjorie Miller met with Wayne Gronquist and Danny Davila’s office where the confession of the theft of the $800,000 annuities by Sylvia Hamilton was discussed. Danny Davila handed Alan Hamilton a ticker tape of the added up annuities which were missing from the Estate. (Exhibit Davila ticker tape copy).
25. In October 2008, Sylvia Hamilton and Danny Davila filed 1040 taxes which did not mention the missing $800,000 and did not file a Trust 1041 form for the Trust or send Alan Hamilton his Trust K-1’s and Trust Annual Report. Fraudulent taxes were filed to cover-up the embezzlement. (Exhibit 2003 Taxes)
26. A Irrevocable Estate (QTIP-marital bypass estate) is standard Estate Planning knowledge of both Probate Attorneys and CPA/PFS, which both do Estate Planning. The non-execution by Brad Seals and Danny Davila of the Alfred and Maurine P. Hamilton Will and Trust is unexplainable.
27. Mutual of Omaha, Danny Davila and Sylvia Hamilton refused to do an investigation or attempted to stymy an investigation into the matters of the embezzlement. Wayne Gronquist also stopped his investigation after a suspected meeting with Danny Davila and Brad Seals over Christmas 2008. Wayne Gronquist supposedly died in Costa Rica in Nov 2010, in the middle of an SEC investigation and this investigation.

COUNT ONE: BREACH OF FIDUCIARY DUTY

The elements of a breach of fiduciary duty claim are: (1) a fiduciary relationship must exist between the plaintiff and defendant; (2) the defendant must have breached this duty; and (3) the breach must result in injury to the plaintiff or benefit to the defendant.

1. Plaintiff realleges and restates the foregoing jurisdictional allegations and general factual allegations. [This brings the foregoing allegations into the count itself.]
2. Defendant Sylvia Hamilton had a Fiduciary Duty as the Agent/DPOA for Maurine Hamilton and the Family Trust for which Maurine Hamilton was the Trustee. Instead she has confessed to embezzling the Estate to Insolvency.
3. The August 6, 2004 written contract for Durable Power of Attorney (DPOA)/Fiduciary Duty, between Danny Davila, Maurine Hamilton and Sylvia Hamilton, transfers to Maurine Hamilton, Trustee of the Maurine P. Hamilton Estate/Trust. Alan Hamilton is now the Executor/Successor Trustee of the Maurine P. Hamilton Estate/Trust, per a Probate Court order, after Danny Davila did not take over after Sylvia Hamilton’s non-performance of duties, per the DPOA agreement of 2004. So a Fiduciary Duty exists between plantiff and defendant. (1st Element-Danny Davila). See Exhibit DPOA2004
4. Defendant Danny Davila demanded $2,072.29 from Alan Hamilton, for Sylvia Hamilton and the Hamilton Estate’s old bills to date that were unpaid by Sylvia Hamilton, before he would show him the 2004 Amended, 2005 and 2006 taxes. If you demand payment from someone, you are working for them and a Fiduciary Duty is then owed.
5. The 2004 Amended tax returns by Danny Davila, given to Alan Hamilton in March 2009, still did not subtract the missing $749,000 (??? Exact) which Danny Davila had told Alan Hamilton on Sept 11, 2008 was missing from the Estate. It was also not subtracted in the 2005 or 2006 taxes done by Danny Davila.
6. Defendant Danny Davila was obligated by the contract to deliver take over the responsibilities of the Estate if Sylvia Hamilton did not perform them.
7. Defendant Danny Davila was paid by Sylvia Hamilton/Maurine Hamilton for the execution of the DPOA.
8. Defendant Danny Davila filed tax extensions in 2005 and 2006 and did not check on the condition of the Estate or his client, Maurine Hamilton, which he had promised to do in the DPOA. Had Danny Davila taken over the Estate duties for a non-performing Sylvia Hamilton in April 2005, Oct 2005, or April 2006, instead of filings tax extensions, the embezzlement could not have continued and Maurine Hamilton would have made it to the long-term nursing care home for which she had insured herself for many years. Maurine Hamilton died in Sylvia Hamilton’s care on Oct 6, 2006, as Alan Hamilton’s attorney began inquiring with Sylvia Hamilton about the missing Trust payments , K-1s and Trust Annual Reports that Alan Hamilton Hamilton had been requesting. Therefore, the defendant breached his Fiduciary Duty to Maurine Hamilton and her Estate. (2nd Element-Danny Davila). See Exhibit Danny Davila’s Hamilton billing records
9. Defendant Mutual of Omaha has a Fiduciary Duty to their clients and did not exercise ordinary care or due diligence in accepting a questionable DPOA document from a recent widow. Had a simple letter of release been sent to Alan Hamilton, the second beneficiary of the Estate, as is standard care, the embezzlement of the Estate would not have happened. Mutual of Omaha owes at least this much to their customers large investments, more money than is involved in most Title Insurance for real estate sales. Talon Development demanded a Letter of Release of responsibility from Sylvia Hamilton, before they would pay Alan Hamilton $20,000 payment for the oil lease on the farm land he inherited. (see Exhibit 4: Talon Letter of Release)
10. Defendant Brad Seals is an Estate/Probate/Trust attorney with many years experience in Austin, Texas and has a Fiduciary Duty to his clients. And yet he began withdrawing money from the Hamilton Estate on 6/7/2004, before ever getting a copy of the Will and Trust, contacting the beneficiaries for a reading of the Will, or filing Intestate is a Will could not be found. (see Exhibit Jefferson Insurance and email)
11. Defendant Brad Seals then referred Sylvia and Maurine Hamilton to an accountant, Danny Davila with a reference to how the amount of annuities that Maurine Hamilton had being worth his time, the same annuities which then disappeared with Danny Davila’s assistance, “ because he had a license.” Again, neither Brad Seals, a Probate attorney, or Danny Davila, a CPA/PFS, followed the Will/Trust documents of the Estate. The 2003 taxes clearly show Danny Davila had to be aware of the Trust. (see Exhibit bank account 1099s from 2003 taxes)
12. Defendant Sylvia Hamilton with the help of Gina Andro, according to her confession, did willfully steal the annuities and other monies from the Estate for their own use. The bank records clearly show Maurine Hamilton’s accounts containing the annuities being drained immediately after obtaining the “early release”, with the assistance of a CPA, Danny Davila. Bank records show large $150,000 transfers to Sylvia Hamilton’s account from Maurine Hamilton’s annuity accounts, continuing after her death(?) (get exact dates of last withdrawals – would prove she went to bank without Maurine aok). (see Exhibit $150,000 transfer receipt)
13. Mutual of Omaha has done no investigation of the missing annuities, as it would for an arson investigation. Instead Mutual of Omaha turned the missing money over to a collections agency and sent them to intimidate the victim Alan Hamilton from pursuing the matter further.
14. The Estate was found to be Insolvent, upon the examination of Alan Hamilton’s Probate attorney between Sept 2008 and the present, though financial records for the estate continue to be willfully concealed and withheld from the Executor by Sylvia Hamilton and Danny Davila in her place. As a direct result of Defendants breach, Plaintiff suffered substantial money damages. (3rd Element – All Defendants) (see Exhibit Sylvia’s embezzlement confession/accounting for Probate Judge – all bank accounts near $0.00)

Note to self: look into Fiduciary Duty co-responsibility article perhaps for rest of Defendants. Definitely had Fid Duty to Maurine Hamilton which translates to duty to Estate, as she was died somewhat as a result of the need to cover up the embezzlement.

WHEREFORE Alan Hamilton, as the Executor and a beneficiary of the Maurine P. Hamilton Estate/Trust demands judgment for money damages against Danny Davila et al, together with such other and further relief as the Court may deem reasonable and just under the circumstances.

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Alan L. Hamilton, Plaintiff

COUNT TWO: NEGLIGENCE

#### [*http://www.west.net/~smith/negligence.htm*](http://www.west.net/~smith/negligence.htm)

#### *NEGLIGENCE-ESSENTIAL ELEMENTS*

#### The elements of a cause of action in tort for negligence are: (1) a [duty](http://www.west.net/%7Esmith/duty.htm) to use ordinary care; (2) breach of that duty; (3) a [proximate causal connection](http://www.west.net/%7Esmith/causation.htm) between the negligent conduct and the resulting injury and (4) resulting damage. (*Budd v. Nixen* (1971) 6 Cal.3d 195, 200.)

#### *DUTY TO ANTICIPATE CRIMINAL CONDUCT OF THIRD PERSON*

#### When the circumstances are such that the possibility of harm caused by the criminal conduct of a third person is, or in the exercise of due care should be, reasonably foreseeable, it is negligence to fail to use reasonable care to prevent such criminal act from causing injury or damage.

1. Plaintiff realleges and restates the foregoing jurisdictional allegations and general factual allegations. [Bringing the foregoing allegations into this count.]
2. The defendants Brad Seals, Danny Davila, Mutual of Omaha all owed Maurine Hamilton a duty to use ordinary care in their normal Professional business duties, to take care releasing all her life savings in cash to her “caretaker” and one out of two beneficiaries. All of the annuities mentioned two beneficiaries, Sylvia and Alan, Danny Davila has notes mentioning “Allan” as 50% beneficiary of the estate, and Brad Seals, should have determined the legal state of the Estate, Testate or Intestate, at least, before beginning Estate Distributions. Upon finding it was Testate, he would have found the Will and Trust documents which should have been followed as a professional Estate and Probate attorney with many years experience. (1st Element- Brad Seals, Danny Davila, Mutual of Omaha)
3. Have you heard the one about one of two beneficiaries walks into a CPA’s Office…
4. The defendants Brad Seals, Danny Davila, Mutual of Omaha all breached that duty by failing to send a simple letter of release to the second beneficiary, Alan Hamilton, which would have stopped Sylvia Hamilton’s embezzlement of her mother’s entire life savings, at any point at long the way. Instead, Alan Hamilton had no knowledge of what was going on, even though he contacted both Danny Davila and Mutual of Omaha in 2005 to inquire as to the state of things. Alan Hamilton was not informed of any changes. Letters of Release are standard care in any release of large sums of money, of which possible ownership issues are at stake, and possibly fraud is suspected. (see Exhibit: “Talon Development request to Alan Hamilton for a Letter of Release of Responsibility from Sylvia Hamilton for oil lease name ownership change and mere $20,000 payment to Alan Hamilton”, much less than $439,000 annuities early release). (2nd and 3rd Element – Danny Davila, Brad Seals, Mutual of Omaha)
5. Mutual of Omaha suspected fraud as evidenced by their letters to Maurine Hamilton, and still released the money with no more investigation, or simple Letter of Release to the 2nd beneficiary, Alan Hamilton, in order to make sure their client was not being robbed blind, or dead as it turned out. Maurine Hamilton was found dead in Sylvia Hamilton’s care 2 years later, after requesting to go into a nursing home. The bank accounts were found to have only $30,000 left in them at the time of her death in Oct 2006. Alan Hamilton’s lawyer had contacted Sylvia Hamilton in June 2006, in order to get the Trust records and K-1’s Alan Hamilton had requested from bother Sylvia Hamilton and Danny Davila. Maurine Hamilton had asked Alan Hamilton to help get her to a nursing home and that Sylvia Hamilton “had gone crazy”. Sylvia Hamilton heist was about to be found out. Maurine Hamilton was wheel-chair bound, and Sylvia would not let her have visitors, phone calls or let the home health aides come in. (Witness- Hester Pollard, home health aide, John Cowan, farm manager) (wrongful death??? Elements)
6. The estate was found to be Insolvent by Alan Hamilton’s attorney between Sept 2008 and the present. (4th Element – Brad Seals, Danny Davila, Mutual of Omaha)
7. As a direct and proximate result, Plaintiff suffered substantial money damages.

WHEREFORE Alan Hamilton, as the Executor and a beneficiary of the Maurine P. Hamilton Estate/Trust demands judgment for money damages against Danny Davila et al, together with such other and further relief as the Court may deem reasonable and just under the circumstances.

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Alan L. Hamilton, Plaintiff

COUNT THREE: WRONGFUL DEATH

<http://accident-law.freeadvice.com/accident-law/wrongful_death/wrongful_death.htm>

A wrongful death claim generally consists of four elements: (1) the death was caused, in whole or part, by the conduct of the defendant; (2) the defendant was negligent or strictly liable for the victim’s death; (3) there is a surviving spouse, children, beneficiaries or dependents; and (4) monetary damages have resulted from the victim’s death.

1. Plaintiff realleges and restates the foregoing jurisdictional allegations and general factual allegations. [Bringing the foregoing allegations into this count.]
2. Nearly Identical to Negligence Elements above.
3. As a direct and proximate result, Plaintiff suffered substantial money damages.

COUNT THREE: BREACH OF CONTRACT

1. Plaintiff realleges and restates the foregoing jurisdictional allegations and general factual allegations. [This brings the foregoing allegations into the count itself.]
2. BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING  
   There is an implied covenant of good faith and fair dealing in every contract, requiring that neither party do anything that will injure the right of the other party to receive the benefits of the agreement. Foley v. Interactive Data Corp., 47 Cal. 3d 654, 684 (1988).  
     
   When an insurer unreasonably, or without proper cause, withholds a payment or denies a payment that is due under the policy, the insurer has not only breached the contract, but is subject to the tort of bad faith. Gruenberg v. Aetna Ins. Co., 9 Cal. 3d 566, 574-75 (1973); Waters v. United Services Auto Ass’n, 41 Cal. App. 4th 1063, 1070 (1996).  
     
   DUTY TO INVESTIGATE  
   An insurer cannot deny payments to its insured without conducting a thorough investigation. Egan v. Mutual of Omaha Ins. Co., 24 Cal. 3d 809, 819 (1979)(“[I]t is essential that an insurer fully inquire into the possible bases that might support the insured’s claim”).  
     
   <http://www.inscobadfaith.net/news/bad_faith_law_thumbnail.pdf>  
     
   BAP FAITH LAW IN CALIFORNIA—A THUMBNAIL SKETCH  
   Jordan Stanzler Stanzler Funderburk & Castellon LLP 180 Montgomery Street San Francisco, California 94105 [(415) 677-1450](tel:%28415%29%20677-1450)
3. The 17 May 2004 verbal agreement constitutes an enforceable contract under Florida law and, since the contract was for services that could be performed within the space of one year, it is within Florida’s Statute of Frauds. [Verbal contract for services that cannot be performed within one year are generally unenforceable in Florida’s courts.]
4. Defendant was obligated by the contract to deliver plaintiff’s grapefruit throughout the 2004 grapefruit season.
5. Plaintiff fully performed the contract by advance payment in full.
6. Defendant’s failure to deliver through the entire 2004 season breached the contract.
7. As a direct result of Plaintiff’s breach, Plaintiff suffered substantial money damages.

WHEREFORE Peter Plaintiff demands judgment for money damages against Danny Defendant, together with such other and further relief as the Court may deem reasonable and just under the circumstances.

COUNT FOUR: TORTIOUS INTERFERENCE

<http://www.clarkskatoff.com/general.php?category=Practice+Areas&subhead=Probate&headline=Abuse+of+a+Power+of+Attorney>

“tortious interference with estate planning”

<http://en.wikipedia.org/wiki/Tortious_interference>

Tortious interference of an expected inheritance - One who, by fraud, duress or other tortious means intentionally prevents another from receiving from a third person an inheritance or gift that he would otherwise have received, is subject to liability to the other for loss of the inheritance or gift.

See: [Commerce Bank v. Deborah Flavin Durland, 141 S.W.3d 434 (Mo. Ct. App. 2004)](http://caselaw.findlaw.com/mo-court-of-appeals/1333697.html)

Although the specific elements required to prove a claim of tortious interference vary from one jurisdiction to another, they typically include the following:

1. The existence of a contractual relationship or beneficial business relationship between two parties.
2. Knowledge of that relationship by a third party.
3. Intent of the third party to induce a party to the relationship to breach the relationship.
4. Lack of any privilege on the part of the third party to induce such a breach.
5. The contractual relationship is breached.
6. Damage to the party against whom the breach occurs. [[1]](http://en.wikipedia.org/wiki/Tortious_interference#cite_note-0)
7. Plaintiff realleges and restates the foregoing jurisdictional allegations and general factual allegations. [Bringing the foregoing allegations into this count.]
8. Prior to Defendant’s wrongs complained of, Plaintiff enjoyed a profitable relationship with his former grapefruit customers.
9. Defendant gained knowledge of the identity and location of Plaintiff’s customers in the course of his employment by Plaintiff.
10. Defendant gained knowledge of the number and type of grapefruit Plaintiff’s customers purchased in the course of his employment by Plaintiff.
11. Defendant gained knowledge of the prices Plaintiff’s customers paid for Plaintiff’s grapefruits in the course of his employment by Plaintiff.
12. Defendant intentionally without justification interfered with Plaintiff’s relationship with his former grapefruit customers by selling grapefruit to them directly and at a competitive price.
13. As a direct and proximate result, Plaintiff suffered substantial money damages.

WHEREFORE Peter Plaintiff demands judgment for money damages against Danny Defendant, together with such other and further relief as the Court may deem reasonable and just under the circumstances.

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Peter Plaintiff, Plaintiff

COUNT FIVE: FRAUD

1. Plaintiff realleges and restates the foregoing jurisdictional allegations and general factual allegations. [Bringing the foregoing allegations into this count.]
2. As a direct and proximate result, Plaintiff suffered substantial money damages.

WHEREFORE Peter Plaintiff demands judgment for money damages against Danny Defendant, together with such other and further relief as the Court may deem reasonable and just under the circumstances.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Peter Plaintiff, Plaintiff

**List of Exhibits and witnesses:**

1. 6/7/2004 - email from Brad Seals to Danny Davila about “annuities that are worth his time”, that then end up missing from the Estate. (Exhibit 1: email from Brad Seals to Danny Davila)
2. 1/12/2009 – entire packet from Mutual of Omaha, includes 2004 DPOA by Sylvia Hamilton and Danny Davila, with Danny Davila named as the successor agent for Sylvia Hamilton, instead of Alan Hamilton. (Exhibit 2: 1/12/2009 packet from Mutual of Omaha)
3. 4/14/2009 - received 2004-2009 Hamilton Estate Billing records from Danny Davila finally (with $35 tax extension filing charges for 4/29/2005, 8/30/2005 and 4/30/2006) (Exhibit 3: Danny Davila’s Hamilton Billing records)
4. 9/3/2010 - Sylvia Hamilton’s Letter of release of responsibility/Affidavit demanded by Talon Development from Alan Hamilton, in order to receive a $20,000 payment from an oil lease contract, which had both Alan and Sylvia’s name of it. This shows the ordinary standard of care for releasing much smaller sums ($20,000) of money than Mutual of Omaha released ($800,000). (see Exhibit 4: Talon Letter of Release)
5. Bank of America 1099 from 2003 taxes done by Danny Davila for Sylvia and Maurine Hamilton. Clearly shows knowledge of Hamilton Trust by Danny Davila. (see Exhibit 5: 2003 taxes BofA 1099)
6. 11/2011 – BullionVault, a gold depository/investment company, requests a copy of the Trust when it sees “Trust” on the bank account check. Shows the standard/ordinary care/due diligence for Trusts. (Exhibit 6)
7. Sylvia’s Confession letter to Probate Judge (Exhibit 7)
8. Hamilton Estate Embezzlement TimeLine spreadsheet (Exhibit 8)
9. 1996 Recorded DPOAs – Sylvia Hamilton was already the DPOA – but she had to get 2 doctors certifications or a court order for it to take effect. So instead she got another one written in August 2004 that didn’t require doctors. As well, Hamilton Trust duties removed from 2004 DPOA, which Danny Davila wrote and assumed the successor duties. (Exhibit 9)
10. 12/4/2008 email demand for payment ($2,072.29) from Alan Hamilton from Danny Davila before he would give him the 2004 Amended, 2005 and 2006 tax returns for the Estate. If someone asks for payment from you, they are working for you. Shows direct connect between Danny Davila and Alan Hamilton. This is one of many emails with Danny Davila, showing a working relationship with Alan Hamilton, as Executor of the Estate, taking over for Sylvia Hamilton in the Fall 2008, as Danny Davila should have done in 2005. (Exhibit 10)
11. Voicemail from Danny Davila requesting payment from Alan and saying he wasn’t getting involved “in this feud” (something like that – listen to recording again) he was having with his sister. (Exhibit 11)
12. 8/9/2004 letter from Mutual of Omaha to Maurine Hamilton saying Danny Davila and Sylvia Hamilton called about her annuities without Maurine being present. Showed that Mutual of Omaha first suspicions of fraud were not followed up on. (See Exhibit 12: 8/9/2004 Mutual of Omaha letter)
13. Oct 2004 letter to Maurine Hamilton from Mutual fo Omaha, showing account growth and partial withdrawals and asking why she would want to give this up. (Exhibit 13: Oct 2004 Mutual of Omaha letter)
14. Sept/Oct 2004 letter from Mutual of Omaha Life Insurance Division to Sylvia Hamilton saying they needed Alan Hamilton to fill out and sign a form in order for them to change ownership. Had they done this with the annuities and and made that an attempted theft as well, they would have an A+ and this lawsuit wouldn’t exist and Maurine Hamilton might still be here today. (Exhibit 14)

Witnesses:

1. Hester Pollard, Home Health aide, not allowed in by Sylvia Hamilton to see Maurine Hamilton or speak to on phone
2. John Cowan, Farm manager, not allowed by Sylvia Hamilton to talk to Maurine Hamilton on phone

Shortcut exhibits for lawyers:

Proof of Fidiciary Duty:

1. Exhibit F – single page of 8/6/2004 DPOA with Danny Davila successor (1 page)

Proof of Breach of Fiduciary Duty (Exhibit 2S: Danny Davila successor agent page only)

1. Danny Davila billing records for $35 tax extensions, on 4/29/2005, 8/30/2005 and 4/30/2005. (3 pages) (Exhibit 3S)

Proof of financial loss/injury:

1. 1/12/2009 packet from Mutual of Omaha outlining why they released annuities and their value in October 2004 ($439,000). The annuities were supposed to mature in 2017 with a value of about $1.6 million. (10 pages??? Check) (Exhibit 2: 1/12/2009 packet from Mutual of Omaha)
2. June 2004 Letter from Mutual of Omaha about $315,000 paid to Maurine Hamilton for Alfred Hamilton Death Benefits, referred to by Brad Seals in his email, and with Alan’s name spelled “Allan” in Danny Davila’s handwriting. (3 pages??? check)
3. 2003 tax 1099s show interest paid on approximately $400,000, in various bank accounts. (BofA account received … alone- 1099 with Trust on it) (Exhibit 5)
4. Estate insolvent by the time the embezzlement was discovered in Sept 2008. Sylvia Hamilton’s Oct 2009 written confession to stealing the annuities, money laundering thru Western Union, and her listing of emptied bank accounts. (Exhibit 7)
5. Standard of ordinary care/due diligence by Talon Development by demanding a Letter of release from Sylvia Hamilton before giving Alan Hamilton any money on a contract which contained both of their names. (see Exhibit 4: Talon Letter of Release)
6. Spreadsheet timeline. (Exhibit 8)