

## **TRUSTEES: CHOOSE WISELY— CASE SUMMARY (SMITH V. KIRKLAND)**

In 1993, Steven E. Kirkland created a Trust which he called the "Terrestrial Kingdom of God Trust." Unfortunately, Mr. Kirkland's poorly-drafted Trust has only been fodder for a fight in outer-darkness hell, as his named beneficiaries and trustees continue to fight each other after more than eleven years in the Utah courts. [Smith v Kirkland \(2017\)](#)

Mr. Kirkland named numerous relatives in his Trust as beneficiaries. He named other individuals as trustees, including Valden Cram and Penn Smith.

The Trust was clear that Trustees were to "serve without pay, but it allowed the Trustees to appoint one person as manager who was to be paid 'reasonable compensation.'" The clever Trustees then amended the Trust "to include four paid positions, including a manager and an assistant manager who would each be paid \$50 an hour." They then named themselves as manager and assistant manager. The Trust expressly disallowed any such amendments.

These good Trustee/managers then proceeded to engage in numerous activities without informing the beneficiaries, all the while paying themselves \$50 per hour. When the beneficiaries discovered what was happening, they sued. After eleven (11) years of legal battles, the appellate court ruled that the Trustees and managers had not proved that \$50 per hour was "reasonable compensation."

The appellate court remanded (returned) the case to the district court to determine whether \$50 per hour was reasonable compensation. And so the case goes on, as these good brothers and sisters in the Lord fight a decidedly telestial battle.

By Alicia Knight Cunningham

Click here to see [Smith v Kirkland \(2017\)](#), 2017 UT App 16.

Click here to see our analysis of this case in the blog titled: "[TRUSTEE FEES AND THE TERRESTRIAL KINGDOM OF GOD](#)"