COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

No. 2019-P-0680

Essex, ss.

THE ESTATE OF JACQUELINE ANN KENDALL

PETITIONER-APPELLANT

v.

EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

RESPONDENT-APPELLEE

ON REPORT FROM ESSEX PROBATE & FAMILY COURT

APPELLANT'S BRIEF
FOR THE ESTATE OF JACQUELINE ANN KENDALL

Date: June 21, 2019

Meredith A. Fine, Esq.
46 Middle Street Suite 2
Gloucester, Mass. 01930
BBO #669248
978-515-7224
meredith@attorneymeredithfine.com

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STATEMENT OF THE ISSUE

Whether the Estate of Jacqueline Ann Kendall is required to pay a MassHealth claim presented more than three years after Ms. Kendall died, when M.G.L. 190B §3-108 of the Uniform Probate Code prohibits the Personal Representative from paying any claims.

STATEMENT OF THE CASE

Jacqueline Ann Kendall died on August 7, 2014. At the time of her death, she owned a residential property in Gloucester with her brother. The property was rented for four years and then sold on September 18, 2018. Prior to the sale, MassHealth presented a claim for $104,738.23. The Kendall heirs opposed the claim, citing a section of the Uniform Probate Code that prohibits a Personal Representative from paying claims more than three years from the date of death. MassHealth argued it is exempt from this restriction. The sale was allowed to proceed and the funds are being held in escrow by the Kendall family attorney.

The Kendall family filed a Motion for Summary Judgment in the Essex Probate & Family Court on February 19, 2019, asking the Court to affirm that the Estate had no legal right or duty to pay the

MassHealth claim. On February 27, 2019, MassHealth filed its opposition to the Motion and filed a Cross Motion for Summary Judgment. The Court reported the case to the Appeals Court, noting, "The questions presented raise compelling public policy issues."

STATEMENT OF THE FACTS

Jacqueline Ann Kendall died on August 7, 2014. She was survived by three children: Lindsay, Megan, and Jason. At the time of her death, Ms. Kendall co-owned a house at 1 York Road, Gloucester, with her brother as tenants in common. The house was rented until the family decided to sell it in early 2018. In order to sell the property, Ms. Kendall's children were required by the buyer's attorney to either have a personal representative appointed to execute the deed or have the three children certified by the Court as Ms. Kendall's only heirs. One of Ms. Kendall's children, Lindsay Lee, filed a Petition for Late and Limited Formal Testacy for the appointment of herself as Personal Representative in order to execute a deed, pursuant to G.L.c. 190B Section 3-108.

After MassHealth was notified by Ms. Lee that a Personal Representative needed to be appointed, the agency informed the heirs that Ms. Kendall had received more than $100,000 of benefits from the Commonwealth and that it intended to file a claim on the Estate. The Estate responded that MassHealth's claim was time barred. MassHealth opposed Ms. Lee's appointment and moved for the appointment of a public administrator.

In order to effectuate the sale of the real estate, the Probate Court certified Lindsay, Megan, and Jason as Ms. Kendall's heirs and MassHealth agreed to let Ms. Lee's counsel hold the claimed amount in escrow while this matter was litigated.

There are no questions of material fact. The only question is the scope of the Personal Representative's authority. Ms. Lee now argues that she has no authority under the Uniform Probate Code to pay any claims.

ARGUMENT

A. Standard of Review

A party may seek a judgment as a matter of law if the record shows "that there is no genuine issue as to any material fact." Mass.R.Civ.P. 56. "For this purpose, 'genuine' means that the evidence is such that a reasonable factfinder could resolve the point in favor of the nonmoving party, and 'material' means that the fact is one that might affect the outcome of the suit under the applicable law." Mulvihill v. Top-Flite Golf Company, 335 F.3d 15, 19 (1st Cir. 2003).

The burden of proof in this case is on MassHealth. Absent fraud or deception, a creditor is responsible for knowing whether a debtor has died and for knowing how the law applies to its claim. Jackson v. Arooth, 359 Mass. 721 (1971); Thompson v. Owen, 249 Mass. 229 (1924). "The burden commonly rests upon the plaintiff in such cases to ascertain the fact of death and act seasonably to protect his rights." Jackson at 723. MassHealth must prove that its claim was filed within the required time limit. Breen v. Burns, 280 Mass.

222, 228 (1932); Gallo v. Foley, 299 Mass. 1, 3 (1937).

B. THE COMMONWEALTH HAS A LONGSTANDING POLICY OF ENSURING THE EFFICIENT AND COMPLETE SETTLEMENT OF ESTATES.

1. For more than two centuries, creditors of estates have been required to file their claims promptly.

Creditors have had a limited time to file claims on Massachusetts estates since 1788.[1] The purpose of the short statute of limitations is to bring estates to a swift conclusion and to protect heirs from creditor demands long after the decedent's death. Stebbins v. Scott, 172 Mass. 356, 362 (1899). "This statute [now G.L.c. 190B §3-803], like those which preceded it, and from which it differs only as to the limitation of time which is to constitute an effectual bar, is designed to procure a speedy settlement of estates, that the heirs, by the removal of all liens in favor of creditors, may be quieted in their titles." Lamson v. Schutt, 4 Allen 359, 360 (Supreme Judicial Court, 1862).

[1] G.L.c. 190B §3-803.

Because the time bar runs from the date of death instead of the date of the Personal Representative's appointment, it is more like a statute of repose or a nonclaim statute than a traditional statute of limitations. In re Estate of Kruzynski, 2000 ME 17, 744 A.2d 1054 (Supreme Judicial Court of Maine, 2000).[2] See also Dept. of Pub. Welfare v. Anderson, 377 Mass. 23, 35 (1979). The purpose of a statute of repose is to curtail "indefinite liability" and promote "certainty in human affairs." Harlfinger v. Martin, 11 Mass.L.Rptr. 428 (Massachusetts Superior Court)(2000).

The limit on estate claims is so inviolable that a Personal Representative would breach his/her fiduciary duty by paying a claim after the time period has expired. The case of Lamson v. Schutt, supra, is instructive. The statute of limitations on claims at the time was two years. The executor sought a license to sell the decedent's real estate to benefit creditors of the estate one month after the statute of

[2] "Generally speaking, probate statutes of limitations which begin running from the date of the death of the decedent, rather than from a date established by the probate court proceedings, are self-executing. See Estate of Decker v. Farm Credit Serv. of Mid-America, 684 N.E.2d 1137, 1139-40 (Ind.1997) (holding that one-year nonclaim statute, running from the death of the decedent, is self-executing and does not implicate the Due Process Clause)." *Kruzynski* at 1057.

limitations for creditor claims expired. The decedent's heirs objected to the sale, arguing that the executor no longer had the authority to sell estate property. The Supreme Judicial Court ruled for the heirs. The Court found that the deadline was "a decisive and insurmountable objection to the maintenance of the petition." Lamson at 360. Even though the executor had promised to pay the creditors, and even though the creditors may have relied on that promise in not filing their claims, the promise expired with the statute of limitations. *Id.* Indeed, after two years, the executor was duty-bound to reject the creditors' claims and had no authority to convey title. *Id.* Even if the real estate were sold, the creditors would no longer have any claim on the assets of the estate. *Id.* at 361. "This doctrine has been repeatedly and uniformly asserted and upheld." *Id.* at 360.

The law in Massachusetts has been clear for centuries: Creditors of an estate have a short window in which to make their claim and once the window closes, it is closed forever.

2. A statute of limitations applies to MassHealth claims.

MassHealth is not exempt from a statute of limitations that applies to creditors of estates. This question was answered definitively in Dept. of Pub. Welfare v. Anderson, 377 Mass. 23 (1979). The decedent, one Aini Anderson, received medical assistance for more than five years, totaling $20,155.81. She died on December 23, 1972, and probate was opened on February 8, 1973. Ten months later, the Department of Public Welfare filed a notice of claim and, on the same day, commenced suit. The executor refused to pay the claim because neither the notice nor the civil action occurred within the nine-month limit in G.L.c. 197 §9 [now G.L.c. 190B §803].

The Department of Public Welfare argued that it was exempt from the short statute of limitations for two reasons. First, it argued that under the doctrine of sovereign immunity, the Commonwealth could not be bound unless the statutory language specifically consented to being bound, and there was no such consent. Second, the statute governing public assistance claims does not explicitly mention G.L.c.

197 §9. Therefore, the Commonwealth argued, the Department of Public Assistance had no time limit on its claims.

The Court disagreed. The Court found that the claim at issue was more like a private contract than a sovereign act. *Id.* at 634. While acknowledging there is no direct link between the short statute of limitations of claims in G.L.c. 197 §9 and the public assistance statute in G.L.c. 118E, the Court found that there was no language in chapter 118E exempting the Commonwealth from the short statute of limitations. *Id.*

> [W]e note that a growing majority of jurisdictions hold that such statutes are to be viewed as nonclaim statutes, distinct from standard statutes of limitation, and thus apply to State claims even absent an expression of intent by the Legislature to be so bound. These jurisdictions find the distinction to be basic for the following reasons. Statutes of limitations generally are viewed as pertaining to remedies, not the creation of rights. They constitute affirmative defenses which if not pleaded are deemed waived. On the other hand, nonclaim statutes impose a condition precedent to the right of recovery. Failure to satisfy the requirement of a condition precedent to recovery cannot be waived, and failure to comply voids the claim. If a State is not otherwise exempt from

> satisfying a condition precedent to a right of action, there is no reason to exempt it from the operation of nonclaim statutes. We agree with this reasoning and note that in the Commonwealth the requirements of the short statute are also absolute, see 1 G. Newhall, Supra s 189 at 547-548, and may not be waived. [Citation omitted] Accordingly, we adopt the majority rule relative to the application of nonclaim statutes to State claims and hold that the department's claim is barred by G.L. c. 197, s 9.
>
> Dept. of Pub. Welfare v. Anderson, at 635-36.

The condition precedent is that the beneficiary had to be at least 65 years old to receive benefits. *Id.* at 634. The Court noted that its decision serves the policy purposes of both the timely administration of estates and the financial imperative of recovering public benefits. *Id.* a 636. It has been clear since the Anderson case that a statute of limitations on claims applies to MassHealth.

The Legislature has had numerous opportunities to carve out an exception for MassHealth and has declined to do so. For example, in G.L.c. 197 §9A, the Legislature gave extra time to insurance companies to file claims under certain circumstances. In Cross v. Hewitt, 52 Mass.App.Ct. 538 (2001), the Appeals Court

emphasized that the short statute of limitations was intended to protect heirs rather than creditors. *Id.* at 540-541. At the same time that the Legislature and the Court opened the window a little wider for insurance companies, they could have included MassHealth, and they did not.

From its earliest days, the Commonwealth has capped the amount of time that a creditor could file a claim. That policy did not change when the Uniform Probate Code was approved.

C. THE UNIFORM PROBATE CODE AND THE STATUTE THAT GOVERNS MASSHEALTH CLAIMS ARE EASILY HARMONIZED AND SERVE THE SAME POLICY PURPOSES OF EFFICIENCY AND FINALITY.

1. The Legislature is presumed to understand the effects of its decisions.

Statutes are intended to be read together, as consistent parts of a larger Legislative system. Green v. Wyman Gordon Company, 422 Mass. 551, 554 (1996).[3]

[3] See also Eastern Racing Ass'n v. Assessors of Revere, 300 Mass. 578, 571 (1938): "The statutes bearing on the subject matter before us should be read as a whole and ought, if possible, to be so construed as to make [them] effectual piece[s] of legislation in harmony with common sense and sound reason. In enacting the statute creating the Board of Tax Appeals and the amendments thereto, the Legislature must be presumed to have known of the existing provisions of the statutes applicable to the assessment of taxes, and the means provided for abatement thereof. The principle of interpretation is well established, that statutes

"We assume that the Legislature was aware of existing statutes when enacting subsequent ones." *Id.* "Thus, we attempt to interpret statutes addressing the same subject matter harmoniously, so that effect is given to every provision in all of them." *Id.* (internal punctuation omitted.)

Statutes are not created in a vacuum. Rather, they build on earlier versions of the law to serve overarching policy goals. Commonwealth v. Harris, 443 Mass. 714, 726 (2005). Statutes are considered to be *in pari materia* -- of common construction -- when they relate to the same subject matter, person, or thing. 2B Sutherland Statutory Construction §51:3 (7th edition). Newer statutes are presumed to supplement existing laws. "[T]he Legislature in passing the later act must be taken to have had the provisions of the earlier one in mind, and to have intended both acts to operate as parts of one harmonious whole." Commonwealth v. King, 202 Mass. 379, 388 (1909). If the Legislature intended to replace or change a certain principle or policy, it could easily have

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alleged to be inconsistent with each other, in whole or in part, must be so construed as to give reasonable effect to all, unless there be some positive repugnancy between them." (Citations and punctuation omitted.)

expressed that intent. Commonwealth v. Lucret, 58 Mass. 624, 629 (2003). In the absence of an express intent to change or replace a policy, the newer statute must be read as carrying out the same policy as the existing law.

An example of harmonizing statutes can be found in Commonwealth v. Vickery, 381 Mass. 762 (1980). In Vickery, a criminal defendant petitioned the Court to seal the record of his conviction. Vickery argued that a statute regulating administrative procedures of the criminal history systems board could be read together with a statute allowing criminal records to be sealed. In order to do so, the Court would have had to impute words into the former statute. The Court declined. "[A] basic tenet of statutory construction is to give the words their plain meaning in light of the aim of the Legislature, and when the statute appears not to provide for an eventuality, there is no justification for judicial legislation." *Id.* at 880–81. The Court said that the difference between a pardon and a dismissal was too great to read the statutes together.

Here, on the other hand, all of the statutes relate to claims made on estates. It must be assumed

that the Legislature was aware of the statutes governing MassHealth when it passed and amended the Uniform Probate Code; these statutes must be read in *pari materia*, as pertaining to the same subject matter; and these statutes all promote the same policy goals of efficiency and finality.

2. The Uniform Probate Code strictly limits the authority of a personal representative appointed more than three years after the date of death.

The short statute of limitations on estate claims is found in G.L.c. 190B §3-803 titled "Limitations on Presentation of Claims":

> (a) Except as provided in this chapter, a personal representative shall not be held to answer to an action by a creditor of the deceased unless such action is commenced within 1 year after the date of death of the deceased ….[4]

Notably, the statute of limitations begins to run from the date of death, not from when a Personal Representative is appointed or his/her bond is given. The Massachusetts limitation period was reduced from three years to one year in 1989, in response to Tulsa

[4] G.L.c. 3-805 lists seven kinds of estate payments in priority order. "Debts due to the division of medical assistance" is sixth, followed by "all other claims." Thus, MassHealth is a type of creditor.

Professional Collection Services v. Pope, 485 U.S. 478 (1988).[5] In Pope, the Court found that Oklahoma's two-month statute of limitations on claims violated the Due Process clause of the United States Constitution because the appointment of a personal representative triggered publication of a notice. The publication mandate constituted sufficient state action to require actual notice to every creditor. In response to Pope, Massachusetts was among the states that changed the start of the limitations period to the date of death. Editors' Notes to G.L.c. 190B §3-803.

In the Editor's Notes, supra, the authors of Massachusetts' 1989 amendments recognized that reducing the length of time for creditors' claims might allow some executors to avoid paying potential claims by allowing the one-year period to expire without taking any action. "The scenario was deemed to be unlikely, however, for unpaid creditors of a decedent are interested persons who are qualified to

[5] In *Pope,* the Court labels the statutes that run from the date of death, rather than the appointment of a personal representative, as self-executing statutes of repose. "The State's interest in a self-executing statute of limitations is in providing repose for potential defendants and in avoiding stale claims." Pope at 486. The U.S. Supreme Court was making the same point that Massachusetts courts have repeatedly made: Short statutes of limitation on claims that run from the date of death are intended to favor heirs over creditors.

force the opening of an estate for purposes of presenting and enforcing claims." *Id.* "[T]he odds that holders of important claims against the decedent will need help in learning of the death and proper place of administration is rather small." *Id.* The odds of MassHealth being unaware of a claim are especially small because MassHealth would know immediately when benefits had ceased.

The second statute at issue here is G.L.c. 190B §3-108, titled "Probate, testacy and appointment proceedings; ultimate time limit." This statute makes clear that estates can be opened more than three years after a death for only very limited purposes. If an estate must be opened more than three years after the decedent's death, a special procedure is required titled "Late and Limited Formal Testacy."

The Legislature amended eight sections of the Uniform Probate Code in 2012, including key sections that apply to this matter. It is noteworthy that of the eight amendments, two addressed § 3-108. Section 4 of G.L.c. 3-108 was changed and Section 5 was added to clarify and emphasize the Personal Representative's limited role.

The version of § 3-108(4) in effect when Ms. Kendall died stated:

> No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than 3 years after the decedent's death, except that: … (4) an informal appointment or a formal testacy or appointment proceeding may be commenced thereafter if no proceedings relative to the succession or estate administration has occurred within the 3 year period after the decedent's death, **but the personal representative shall have no right to possess estate assets as provided in section 3-709 beyond that necessary to confirm title thereto in the successors to the estate and claims other than expenses of administration shall not be presented against the estate**…. (Emphasis added.)

The Legislature added the bold-faced language in the 2012 amendments. According to a Procedural Advisory from the Probate and Family Court Department dated October 26, 2012, the purpose of the new language was to be more specific about the role of a personal representative under a Late and Limited Formal Testacy. Procedural Advisory (Probate and

Family Court Department, October 26, 2012). "[T]he authority granted under this exception is limited to confirming title and paying expenses of administration. No authority is granted to the personal representative to possess or distribute property, except to the extent necessary to confirm title, **or to pay creditor claims**." (Emphasis added.) Id. The advisory could not be clearer: A personal representative appointed more than three years from the decedent's death cannot pay claims. Here was another opportunity for the Legislature to exempt MassHealth, and it did not.

The new Section 5 gave a personal representative the ability to exercise a power of appointment in a trust more than three years after the decedent's death. By making this exception to the personal representative's limited role, the Legislature was also emphasizing the point of how limited that role is.

After the Uniform Probate Code was amended in 2012, it was amended again in 2015, in response to requests from the Division of Medical Assistance Estate Recovery Unit. Notice from the Probate and Family

Court Department of the Trial Court. Once again, the Legislature had an opportunity to address the three-year limit in §3-108 and once again, no changes were made.

More than three years after the decedent's death, a personal representative has the power to take only three actions: She can execute title documents transferring assets to heirs, she can pay estate expenses, and she can exercise a power of appointment in a trust. There would be no reason to allow a personal representative to pay claims because these claims would be time barred. The policy undergirding Section 3-108 is the same speedy settlement of estates that underlies the short statute of limitations on claims.

3. G.L.c. 118E and the Uniform Probate Code deal with the same subject matter and must be read in harmony.

MassHealth cites G.L.c. 118E §32 for its authority to file a claim in this matter. That statute lays out two alternative time periods for MassHealth to file claims: One year from the date of death or four months after approval of the personal

representative's bond, whichever is later. It cannot be read in a vacuum, however. It must be interpreted *in pari material* with other relevant statutes.

MassHealth argues that it can file a claim on the Kendall estate four months after a Personal Representative is appointed, regardless of how much time has elapsed from the date of Ms. Kendall's death. Granting MassHealth unlimited time to file its claim would stand the state's policy of efficiency and finality on its head.

MassHealth relies in part for its argument that it is entitled to special treatment on G.L.c. 190B §3-803(f), which reads:

> (f) If a deceased received medical assistance under chapter 118E when such deceased was 55 years of age or older or while an inpatient in a nursing facility or other medical institution, section 32 of chapter 118E shall govern the notice to be given to the division of medical assistance and such division's claim for recovery under section 31 of said chapter 118E if the division so chooses.

Although G.L.c. 190B §3-803(f) requires notice to MassHealth, it does not extend the

statutory deadline for the filing of claims in section (a) of 3-803 nor does it broaden the authority of a personal representative appointed more than three years after death. If the Legislature intended to make an exception for MassHealth claims, this would have been a good place to do so.

MassHealth implicates another section of G.L.c. 118E §32 when it seeks the appointment of a public administrator: If no estate has been opened within a year of the beneficiary's death, MassHealth can nominate a public administrator to become Personal Representative to prosecute MassHealth's claim, "regardless of the decedent's date of death." On the surface, this appears to give MassHealth an infinite amount of time to file a claim.

As noted above, however, statutes must be read together and interpreted as a single, consistent document. Section 3-108 of the Uniform Probate Code, which was passed after Chapter 118E, supplements and clarifies Chapter 118E. When reading the three-year limit in §3-108 together G.L.c. 118E, the Legislature arguably has already given MassHealth more time than

the one-year limit that applies to other creditors. The Legislature is saying that during the second and third years after a beneficiary's death, a public administrator can be appointed personal representative to seek payment for MassHealth but after three years, a personal representative – including a public administrator -- has no authority to pay any claim.

In Massachusetts, only one case addresses the scope of a personal representative's authority under the Uniform Probate Code, Bennett v. R.J. Reynolds Tobacco Company, 34 Mass.L.Rptr. 547 (Business Litigation Session, Superior Court)(2018). There, a personal representative opened probate three years and two months after the decedent's death seeking to sue a tobacco company for tort damages and wrongful death. The Court said the personal representative did not have standing to sue. "[A] personal representative appointed more than three years after the death of the deceased pursuant to a Late and Limited petition only has authority to confirm title to assets in the name of the successors. Such a representative cannot pay claims and cannot file claims on behalf of the estate because she does not possess them." *Id.* at 3. The

trial court did not make any exceptions -- the Personal Representative could not pay *any* claims.

D. STATES HAVE SIGNIFICANT FLEXIBILITY TO MANAGE HOW MEDICAID CLAIMS ARE PAID.

With breathless hyperbole, MassHealth makes a variety of dire predictions for the fate of its ability to collect claims if the Appellant prevails. MassHealth has argued that the Appellant's position would violate federal law regarding Medicaid and "would unravel MassHealth by preventing estate recovery." Opposition to Petitioner's Motion for Summary Judgment and Cross Motion for Summary Judgment at 20. Reports of MassHealth's imminent death are greatly exaggerated, however.

States have broad latitude to administer Medicaid programs. An April 2005 advisory by the U.S. Department of Health & Human Services' Office of the Assistant Secretary for Planning and Evaluation stated:

> There are wide variations in the ways in which states implement estate recovery, depending upon their Medicaid program and state laws. However, Federal law requires all states to incorporate the following protections for Medicaid recipients

> into the design of their estate recovery program:
>
> - The State should notify Medicaid recipients about the estate recovery program during their initial application for Medicaid eligibility and annual re-determination process.
>
> - The State must notify affected survivors about the initiation of estate recovery and give them an opportunity to claim an exemption based on hardship.
>
> - The State must establish procedures and criteria to waive recovery if it would cause undue hardship.

Policy Brief #1, US Department of Health & Human Services, Office of Assistant Secretary for Policy & Evaluation, Medicaid Estate Recovery, page 7 (April 2005).

Other than these requirements, federal law simply outlines a framework and state law fills in the details. The statute cited by MassHealth, 42 U.S.C. 1396p, makes no mention at all of the process for recovering Medicaid payments from estates but instead, allows the states to develop their own standards and procedures. In fact, states do take a variety of approaches to Medicaid claims; there is nothing unusual about Massachusetts' scheme. New Mexico's statute, N.M. Stat. Ann. §45-3-108(A), is virtually

identical to the Massachusetts version. In In re Estate of Baca, 127 N.M. 535 (1999)(affirmed in In re Estate of Yogiji, No. 31,178 (2013)), the Court of Appeals of New Mexico noted that the legislative language is so clear that there is little case law on the question of claims made after three years. *Id.* at 539. Nebraska also has a three-year statute of limitations, which the Nebraska Supreme Court applied to Medicaid clams in In re Estate of Cushing, 283 Neb. 571 (2012).

E. ADMINISTRATIVE INCONVENIENCE CANNOT BE USED AS AN EXCUSE TO VIOLATE STATE LAW.

MassHealth, as a creditor, has the ability to open estates itself and pursue its claims. Opposition to Petitioner's Motion for Summary Judgment and Cross Motion for Summary Judgment at 21. Apparently, MassHealth does not relish the prospect of adapting its routines to the requirements of the law, a process it describes as unnecessary and burdensome. Regardless of whether enforcing its claims would be inconvenient, MassHealth has no authority to rewrite the law.

As they pertain to this matter, the relevant statutes are unambiguous, concern the same subject

matter, and therefore must be read *in pari materia* as follows:

- The Commonwealth has a longstanding policy of settling estates promptly and completely to protect heirs from unlimited liability.
- MassHealth has up to three years after a beneficiary's death to file a claim.
- If no estate is opened within three years of the date of death, a personal representative has no authority to pay a claim, including a claim from MassHealth.

After the third anniversary of Ms. Kendall's death on August 7, 2017, her personal representative could do only two things: She could sign a deed to transfer 1 York Road to the three heirs and she could pay estate expenses. Even if a public administrator were appointed personal representative, as MassHealth has requested, he would have no authority to pay MassHealth's claim. On August 8, 2017, MassHealth's claim expired.

When Ms. Kendall died, her benefits stopped. At that point, MassHealth had constructive notice of her death and could have opened an estate within the allowed time limit to assert its claim. It failed to do so. Allowing MassHealth to file a claim now would distort centuries of policy favoring the swift administration of estates. Massachusetts law has long protected heirs from exactly this kind of late claim. The Legislature emphatically re-asserted these policies when it passed the Uniform Probate Code.

CONCLUSION

Based on the arguments made here, the Estate of Jacqueline Ann Kendall asks this Honorable Court to authorize the disbursement of the proceeds from the sale of 1 York Road to Ms. Kendall's heirs.

Respectfully submitted,

/s/ Meredith A. Fine

Meredith A. Fine, Esq.
BBO #669248
46 Middle Street Suite 2
Gloucester, Mass. 01930
978-515-7224
meredith@attorneymeredithfine.com

Date: July 15, 2019

ADDENDUM

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 16(k) of the Massachusetts Rules of Appellate Procedure

I, Meredith A. Fine, hereby certify that the foregoing brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to:

Mass. R. A. P. 16 (a)(13) (addendum);
Mass. R. A. P. 16 (e) (references to the record);and
Mass. R. A. P. 20 (form and length of briefs, appendices, and other documents).

I further certify that the foregoing brief complies with the applicable length limitation in Mass. R. A. P. 20 because it is produced in the monospaced font Courier New at size 12 pts and contains 32 total non-excluded pages.

/s/ Meredith A. Fine
Meredith A. Fine

CERTIFICATE OF SERVICE

Pursuant to Mass.R.A.P. 13(d), I hereby certify, under the penalties of perjury, that on July 15, 2019 I have made service of this Brief upon the attorney of record for each party by the Electronic Filing System:

David R. Marks, Esq.
BBO No. 548982
Office of the Attorney General
One Ashburton Place, Room 2019
Boston, MA 02108-1698
617-963-2362

Respectfully submitted,

/s/ Meredith A. Fine

Meredith A. Fine, Esq.
BBO #669248
46 Middle Street Suite 2
Gloucester, Mass. 01930
978-515-7224
meredith@attorneymeredithfine.com

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