

IN THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN
DISTRICT OF TEXAS HOUSTON
DIVISION

Candace Louise Curtis	§	
Andrew Curtis	§	
Andrew Curtis Jr	§	
Plaintiffs	§	
	§	
vs.	§	
	§	Civil Action No.
Stephen A. Mendel	§	
Candace Kunz-Freed	§	
Bernard Lyle Mathews III	§	
Neal Spielman	§	
Bobbie G. Bayless	§	
Gregory Lester	§	
Anita Brunsting	§	Demand for Jury Trial
Clarina Comstock	§	
Cory Reed	§	
Does 1-100	§	
Defendants in their individual capacities	§	

VERIFIED COMPLAINT FOR DAMAGES

I. Jurisdiction and Venue

1. Jurisdiction of this Honorable Court is invoked pursuant to 28 USC § 1331 as this petition raises federal questions affecting interstate commerce. Jurisdiction is further invoked pursuant to 28 USC § 1332 as there is complete diversity among the parties.

2. This court also has supplemental jurisdiction pursuant to the Federal Declaratory Judgment Act of 1946: Title 28 United States Code §§2201-2202,

and Rules 56, 57 and 65 of the Federal Rules of Civil Procedure pursuant to the general legal and equitable powers of this Court and because a pending injunction issued in the Southern District of Texas has been violated by these Defendants in perpetuity as an integral part of their color of law fraud conspiracy.

3. Venue is proper in the Southern District of Texas under 28 USC §1391(a)(1), because the events herein complained of occurred primarily in the Southern District of Texas and elsewhere within the interstate jurisdiction of the United States.

II. Nature of the Claims

4. This petition raises civil claims under the Racketeer Influenced Corrupt Organization Statutes of the United States pursuant to 18 U.S.C. § 1962 et seq., (RICO) and Texas state law organized crime statutes pursuant to Texas Penal Code § 71.02 as well as common law tort claims governed under Texas state law.

5. This Petition constitutes a collateral attack on state court judgments void for want of subject matter jurisdiction, misnomers and other anomalies and seeks declaratory judgment regarding the validity of trust instruments and summary judgment regarding the common law claims stated herein.

6. It will be further shown that the Probate Exception, Rooker-Feldman along with notions of Comity and Privity are inapplicable and that Defendants claims of

“probate case”, “probate matter”, “probate proceeding”, “estate of Nelva Brunsting” and “Carl et al.”, are all vacuous slogans used to cloth the nakedness of a criminal conspiracy.

III. Parties

A. Plaintiff’s

7. Plaintiff Candace Louise Curtis is a resident of California and the lawful trustee for the Brunsting Family Inter Vivos Trust whose fiduciary obligations have been tortuously interfered with and whose rights in property as a beneficiary of said trust have been deprived of her without due process in a staged litigation conspiracy. The only party with standing to bring claims on behalf of a living trust is the trustee.

8. Plaintiff Candace Louise Curtis has been deprived of property without due process raising a federal question under U.S. Const. Amendment IV and a state law question pursuant to Article I, Section 9 of the Texas Constitution.

9. Plaintiff Andrew Curtis is the son of Plaintiff Candace Curtis and is a resident of California. As the lawful successor in interest to his mothers’ rights as a beneficiary his property interest have been stolen by these defendants using illicit instruments that have never been qualified as evidence nor declared valid in any proceeding that portend to have replaced an irrevocable trust and contain corruption of blood provisions that are illicit on their face. Plaintiff Andrew Curtis has never been a party to any court proceedings involving this trust.

10. Plaintiff (AJ) is the nine-year-old son and successor in interest to Plaintiff Andrew Curtis whose property interest have been stolen by these defendants under the same color of law corruption of blood theories, schemes and artifice expressed herein. Andrew Curtis Jr. has never been a party to any court proceedings involving his rights as a successor in interest to trust property.

B. Defendants include but may not be limited to:

11. Defendant, de facto Co-trustee Anita Brunsting, (Anita) is a resident of Texas that may be served with process at 203 Bloomingdale Circle Victoria, Texas 77904 where she resides or wherever else she may be found.

12. Defendant Candace Kuntz-Freed, (Freed) Texas State Bar # 24041282, is a resident and citizen of Texas, with a principal place of business in Harris County, Texas that may be served with process at her place of business at 9545 Katy Freeway, Suite 390, Houston, Texas 77024 or wherever else she may be found.

13. Defendant Bernard Lisle Mathews III, (Mathews) Texas State Bar # 13187450 is a resident and citizen of Texas, with a principal place of business in Harris County, Texas that may be served with process at his place of business at 4008 Louetta Rd PMB 261 Spring, TX 77388 or wherever else he may be found

14. Defendant Bobbie G. Bayless, (Bayless) Texas Bar # 01940600, is a resident and citizen of Texas, with a principal place of business in Harris County, Texas that may be served with process at her place of business. Bayless Stokes law firm 2931

Ferndale Houston, Texas 77098 or wherever else she may be found.

15. Defendant Stephen A. Mendel, (Mendel) Texas State Bar # 13930650, is a resident and citizen of Texas, with a principal place of business in Harris County, Texas that may be served with process at his place of business: the Mendel Law Firm, L.P. 1155 Dairy Ashford, Suite 104 Houston, Texas 77079 or at his residence 19419 Kessington Lane, Houston Texas 77094 or wherever else he may be found.

16. Defendant Neal E. Spielman, (Spielman) Texas State Bar # 00794678, is a resident and citizen of Texas, with a principal place of business in Harris County, Texas that may be served with process at his place of business at the Griffin & Matthews law firm 1155 Dairy Ashford, Suite 300 Houston, Texas 77079 or wherever else he may be found.

17. Defendant Gregory Lester, (Lester) Texas Bar # 12235700, is an adult resident and citizen of Texas with a principal place of business in Harris County, Texas and may be served with process at 955 N Dairy Ashford Rd # 220 Houston, Texas 77079 or wherever else he may be found.

18. Defendant Clarinda Comstock (Comstock) is a Harris County employee appointed to act as Associate Judge of Harris County Probate Court No. 4, who can be served at her place of business at 201 Caroline St., 3rd Floor Houston, TX 77002, (713) 274-8600 or wherever else she may be found.

19. Defendant Cory Reed, (Reed) Texas State Bar No. 24076640, is an adult

resident and citizen of Texas with a principal place of business in Harris County, Texas and may be served with process at his place of business at 4400 Post Oak Parkway, Suite 1000, Houston, Texas 77027 or wherever else he may be found.
(713) 403-8200, creed@thompsoncoe.com

20. At all times material to this complaint each RICO Defendant above-named was a "person" within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c) engaged in a racketeering enterprise within the meaning of 18 U.S.C. § 1961(4) and a willful participant in the association in fact criminal conspiracy described herein.

C. Nominal Defendants / Interested Parties

21. Defendant, de facto Co-trustee, Amy Brunsting is de facto co-trustee with Anita Brunsting. Amy Brunsting is citizen of Texas who can be served at her principal place of business at 2582 Country Ledge Drive, New Braunfels, Texas 78132.

22. Interested person Carl Henry Brunsting (Carl) is a de jure co-trustee with Plaintiff Candace Curtis and an income beneficiary but is believed to be disabled based upon the record and judicial admission of his counsel, Defendant Bobbie G. Bayless.

D. Allegation of Fiduciary Relationships

23. Every Defendant in this case is a fiduciary owing undivided loyalty and ultimate good faith to a principal. A fiduciary relationship is a legal or ethical

relationship of trust between two or more parties. In this relationship, one party (the fiduciary) is obligated to act in the best interests of the other party (the principal or beneficiary). This relationship is characterized by a high degree of trust, confidence, and reliance placed by the principal on the fiduciary. The fiduciary duty is the highest degree of obligation known to our law.

Core Elements of a Fiduciary Relationship:

Trust and Confidence: The principal places trust and confidence in the fiduciary to act in their best interest.

Duty of Loyalty: The fiduciary must prioritize the principal's interests above their own, avoiding conflicts of interest.

Duty of Care: The fiduciary must act with diligence, competence, and prudence in managing the principal's affairs.

Fiduciary Duty: This overarching duty encompasses loyalty, care, good faith, and full disclosure.

Breach of Fiduciary

24. Breach of Fiduciary is a common law tort in equity and an element related to some of the predicate act claims alleged herein.

25. A breach of fiduciary duty occurs when the fiduciary acts in their own interest, neglects their duties, or fails to disclose material information and either benefits from their wrongful acts or causes injury to their principal. Remedies may include damages, restitution, or equitable relief. Plaintiffs seek all of these remedies.

IV. Pleading Civil Racketeering

26. Plaintiff is aware that one does not have a claim for civil RICO without substantial evidence of criminal RICO. The necessary pleading elements for a racketeering claim under 18 U.S.C. § 1962, based on the principles stated in *Ashcroft v. Iqbal* and *Bell Atl. Corp. v. Twombly*, are as follows:

Existence of an Enterprise:

- The plaintiff must allege the existence of an "enterprise" engaged in or affecting interstate or foreign commerce.
- The enterprise must be distinct from the individual defendants.

Pattern of Racketeering Activity:

- The plaintiff must allege a "pattern" of racketeering activity, which includes at least two predicate acts of racketeering within a 10-year period.
- Predicate acts must be specified and supported with factual allegations (e.g., mail fraud, wire fraud, etc.).

Connection to the Enterprise:

- The plaintiff must show how the defendant conducted or participated in the conduct of the enterprise's affairs through the pattern of racketeering activity.

Causal Nexus:

- The plaintiff must demonstrate a causal connection between the defendant's racketeering activity and the harm suffered.

27. In the alternative Plaintiffs plead these defendants engaged in a criminal conspiracy, affecting interstate commerce, designed to exploit a family and intercept a generational asset transfer in order to unjustly enrich themselves at the victim's

expense.

V. Introduction to the Probate Mafia Enterprise

28. Every year millions upon millions of dollars are stolen in staged litigation schemes devised with the sole purpose of generating fraudulent bills for alleged attorney's fees. In the process of such schemes, unsuspecting citizens are being pulled into a vortex of litigation posturing, disguised as legitimate court proceedings. The result is financial and emotional devastation for the victims and unjust enrichment for the color-of-litigation predators. All of the trust beneficiaries in this case are victims, including Defendant Anita and Nominal Defendant Amy Brunsting.

29. This Complaint arises from a systematic and pervasive scheme perpetrated by what is herein designated as the "Probate Mafia," an alleged enterprise composed of attorneys, court officials, and related persons. The enterprise is accused of intentionally orchestrating staged litigation schemes in the probate courts with the primary purpose of generating fraudulent attorney's fees at the expense of innocent citizens.

30. Through a coordinated pattern of racketeering activity, the defendants have exploited the probate process to intercept generational wealth, subjecting families to financial and emotional devastation while unlawfully enriching themselves.

31. This action seeks to address and remedy the ongoing harm inflicted by the defendants pursuant to the provisions of 18 U.S.C. § 1962, which prohibits the

engagement in, or participation in, any enterprise's affairs through a pattern of racketeering activity.

32. This lawsuit only involves one family but raises concerns affecting the public interest at large as the dot com revolution generated great wealth and we, as a nation, are in the midst of the largest transfer of family generational wealth in our history. It is well past time for courts of law to make a profound and definitive statement that such a criminal enterprise will not be tolerated in probate theaters.

Specificity in Allegations:

E. Enterprise 18 U.S.C. §1962(d)

33. The enterprise complained of, herein referred to as the probate mafia, involves an association in fact a hub and spoke conspiracy among attorneys and other licensed professionals with a design to intercept (steal) family generational asset transfers under the color of probate litigation even when, as here, there is no estate to subject to in rem proceedings, no estate administrator and no subject matter jurisdiction in the probate court as hereinafter more fully appears.

34. The rights at issue here are property rights in the corpus of a living trust that vested in the beneficiaries at the passing of the last trust settlor on November 11, 2011. The trust corpus does not contain any assets belonging to a decedent's estate. Quite to the contrary, the living trust is the sole devisee of the settlors' probate estate. None of the trust beneficiaries are heir and none have individual standing in

the probate of the settlor's estate. This action raises questions of law subject to de novo review.

35. The term "Probate Mafia" does not appear to have a formal legal definition or recognition in statutes or case law. However, it is often used colloquially to describe systemic abuse, fraud, or exploitation within the probate process or, as here, in the probate theater of operations in the absence of any pending probate proceeding.

36. The term "probate mafia" refers to individuals or groups, such as unethical attorneys, guardians, or other parties, who manipulate probate proceedings for personal gain, often at the expense of vulnerable individuals or their estates.

37. However, while "probate" was used as a magic word for the purpose of undermining federal jurisdiction, there was never any subject matter jurisdiction in the probate court regarding this living trust nor have there been any probate claims litigated in the probate theater as no in rem claims were ever filed against any estate in this case.

- a. [Ex 3-37] 2024-10-03 Estate of Elmer Brunsting 412248 Claim Docket Index Certified.pdf
- b. [Ex 3-38] 2024-10-03 Estate of Nelva Brunsting 412249 Claim Docket Index Certified.pdf

F. Pattern

38. This enterprise begins with an estate planning bait and switch that creates the

controversy thereafter followed by the exploitation of that controversy by the probate mafia acolytes.

39. The number and variety of colorable events in this case are extraordinary. It begins with illicit changes to irrevocable trusts insidiously implemented in the wake of each family crisis, “triggering event” or “Hurrah” as these events are referred to in long con confidence games. In the course of this staged litigation menagerie we find a remand that was not a return, a transfer that was not a transfer, consolidation of parties not even present, a court that could not compose itself with competent jurisdiction, a severance of the parties allegedly consolidated followed by a nonsuit of one consolidated plaintiff by the other consolidated plaintiff and no actual litigation to resolve even the first question necessary to relief to wit: What Instruments comprise “The Trust”?

40. The conflict engineering frontend is followed by attorney collusion and exploitation on the backend in an association in fact conspiracy to loot the family money cow, in this case a living trust.

41. The frontend pattern is well established as it is described in an article posted on the web in 2015 titled “How to Steal your Family Inheritance” [Ex 0-1] and the backend pattern was even described by Honorable United States Judge Kenneth Hoyt Jr. at the hearing on Plaintiff Candace Curtis request for injunction. [Ex 0-3 page 35]

42. This two-part story illustrates a classic pattern as noted and the design that emerges perfectly fits the description of a long con.

Long Con: noun slang

“An elaborate confidence game that develops in several stages over an extended period of time wherein the con man or swindler gains the victim’s trust, often bypassing small profits with the goal of reaping a much larger payout in the final maneuver: The key to pulling off a long con is giving your marks the illusion of control while you and your team manipulate their choices.”

G. Predicate Acts and Common Law Torts Alleged Herein

43. In addition to alleging the existence of an "enterprise" engaged in or affecting interstate or foreign commerce that is distinct from the individual defendants, Plaintiff alleges a "pattern" of racketeering activity, which includes at least two predicate acts within a 10-year period that are specific and supported with factual allegations and exhibits. The elements of the predicate act crimes alleged and listed herein will be expounded upon later and include, but may not be limited to violations of: 18 U.S.C. § 241 & 242 Conspiracy against Rights; 18 U.S.C. § 1503 Obstruction of Justice; Texas Penal Code § 32.45 Misapplication of Fiduciary Property in excess of \$300,000.00, a state law felony; Texas Penal Code § 32.53 Exploitation - Misapplication of Fiduciary Property held in trust for the benefit of Child, Elderly and Disabled Beneficiaries; 18 U.S.C. § 495 Forgery; Violation of the preliminary and permanent federal injunction; Mail Fraud 18 U.S.C. § 1341; Illegal Wire Tap Recording 18 U.S.C. §§ 2510-2522 and Honest Services Fraud/Wire Fraud 18

U.S.C. § 1346.

18 U.S.C. § 241 & 242 Conspiracy against Rights

44. The above named defendants conspired together to injure, oppress, threaten, and intimidate Plaintiff Candace Curtis. The purpose of the conspiracy was to deprive Plaintiffs of rights in property held in a fiduciary capacity under the color of law without the due process of law. The conspirators acted willfully and knowingly and with specific intent, in their concerted effort to deny Plaintiffs constitutionally protected property and due process rights, under color of law without due process of law and each was a participant in the overall scheme.

45. The elements establishing violation of 18 U.S.C. §§ 241 & 242 fully manifest in the attached Memorandum of Facts incorporated herein by reference as if fully restated.

18 U.S.C. § 1503 Obstruction of Justice.

46. This statute addresses actions that obstruct the due administration of justice, including influencing jurors or court officers. The elements are:

- a. **Corrupt Act:** The defendant must have engaged in a corrupt act, such as threats, coercion, or other obstructive conduct.
- b. **Intent:** The act must be done with the intent to obstruct, influence, or impede the due administration of justice.
- c. **Connection to Judicial Proceedings:** The obstructive act must relate to

an ongoing or foreseeable judicial proceeding.

- d. **Materiality (if applicable):** If the act involves false statements, the falsehood must be material to the proceeding.

47. The elements establishing violation of 18 U.S.C. § 1503 fully manifest in the attached Memorandum of Facts incorporated by reference as if fully restated herein.

48. 18 U.S.C. § 1962 (c) Violations of the Racketeer Influenced Corrupt Organization Act.

49. 18 U.S.C. § 1962 (d) Conspiracy to Violate 18 U.S.C. §1962 (c).

Texas Penal Code § 32.45 Misapplication of Fiduciary Property in excess of \$300,000.00, a state law felony.

Under **Texas Penal Code § 32.45**, the elements of the offense of **Misapplication of Fiduciary Property** are as follows:

1. **Fiduciary Relationship:** The defendant must be acting in a fiduciary capacity, which includes roles such as trustee, guardian, executor, agent under a power of attorney, or any other fiduciary role.
2. **Property Held in Trust:** The property in question must be held by the fiduciary for the benefit of another person or entity.
3. **Misapplication of Property:** The fiduciary must intentionally, knowingly, or recklessly misapply the property. Misapplication is defined as dealing with the property contrary to:
 - An agreement under which the fiduciary holds the property, or
 - A law prescribing the custody or disposition of the property.
4. **Substantial Risk of Loss:** The misapplication must involve a substantial risk of loss to the owner of the property or the person for whose benefit the property is held.

50. 44. The elements establishing violation of Texas Penal Code § 32.45 fully manifest in the attached Memorandum of Facts incorporated by reference as if fully

restated herein.

Texas Penal Code § 32.53 Exploitation - Misapplication of Fiduciary Property held in trust for the benefit of Child, Elderly and Disabled Beneficiaries.

Under **Texas Penal Code § 32.53**, the offense of **Exploitation of a Child, Elderly Individual, or Disabled Individual** consists of the following elements:

1. **Act of Exploitation:** The defendant must intentionally, knowingly, or recklessly cause the exploitation of a child, elderly individual, or disabled individual.
2. **Definition of Exploitation:** Exploitation is defined as the illegal or improper use of a child, elderly individual, or disabled individual for monetary or personal benefit, profit, or gain.
3. **Protected Individuals:**
 - **Child:** A person younger than 18 years of age.
 - **Elderly Individual:** A person aged 65 or older.
 - **Disabled Individual:** A person with a physical or mental condition that substantially limits their ability to provide for their own care or protection.
4. **Mental State:** The defendant must act with one of the following mental states:
 - Intentionally,
 - Knowingly, or
 - Recklessly.

This offense is classified as a **third-degree felony** under Texas law.

51. The elements establishing violation of Texas Penal Code § 32.53 fully manifest in the attached Memorandum of Facts incorporated by reference as if fully restated herein.

H. 18 U.S.C. § 495 Forgery

1. Key Elements of Forgery:

1. **False Making or Alteration:** The act of falsely making or materially altering a document or writing.
2. **Intent to Defraud:** The perpetrator must have the intent to deceive or defraud another party.
3. **Legal Efficacy:** The forged document must be one that, if genuine, would have legal significance or impose a legal liability.

52. The August 25, 2010 “Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement” (8/25/2010 QBD) appears in the record with three different signature pages [Ex 2-25a]. Nelva denied having signed it. Candace Kunz-Freeds notary log has only one QBD entry on that date but shows three Certificates of Trust. Defendants refuse to produce it in attempt to qualify it as evidence but continue to use it to make threats and claim corruption of blood to exclude Plaintiff Candace Curtis and her descendants from receiving what they claim Candace forfeited. In their Agreed motion to sell the Iowa farm held in the corpus of the Elmer H. Brunsting trust they claim their heinous instrument no longer needs to be followed. [Ex 2-27]

53. The Elmer H. Brunsting trust is referred to as the “Decedents Trust” because he was the first settlor to pass and under Article VII the corpus was split into two separate trusts under the same indenture with each administered under different rules. [Ex 1-6]

54. However, “Decedents Trust” is a misnomer used to deceive as the Brunsting trust in an inter vivos trust not a testamentary trust and the “Qualified Beneficiary

Designation and Testamentary Power of Appointment under Living Trust

Agreement” does not conform to the amendment requirements of Article III, does not conform to the requirements of a valid testamentary instrument and cannot convert the irrevocable living trust into a testamentary trust.

55. Defendants tried to use this QBD instrument to claim Carl and Candace were not entitled to their share of the trust [Ex 1-34] but Candace answer objected to the artifice as not in evidence [Ex 2-25]. They have not produced it and they will not produce it because they cannot and, even if they could, the instrument remains an illicit attempt to amend a trust that became irrevocable under its own terms.

I. Violation of the preliminary and permanent federal injunction

- a. Valid Order: There must be a clear and unambiguous injunction order in place.
- b. Knowledge of the Order: The defendant must have knowledge of the injunction.
- c. Disobedience of the Order: The defendant must have violated the terms of the injunction

56. The federal injunction [Ex 3-30] is a valid order. Defendants all have knowledge of the injunction but have defied it from inception as it stands in the way of their color of litigation trust looting scheme.

57. The elements establishing violation of the preliminary and permanent

injunction fully manifest in the attached Memorandum of Facts incorporated by reference as if fully restated herein.

J. Tortious Interference with Fiduciary Obligations

58. Plaintiff Candace Curtis and her brother Carl Brunsting are the de jure co-trustees under the valid trust instruments. These defendants have challenged the trust and Tortuously Interfered with Plaintiffs Fiduciary Obligations as an integral part of their ongoing racketeering scheme.

VI. Rooker-Feldman Inapposite

59. Plaintiff Curtis lawsuit was filed in the Southern District of Texas and not in any state court and thus, the Rooker-Feldman Doctrine does not apply to these claims. see *Shell Cortez Pipeline v. Shores* 127 S.W.3d 286 (Tex. App. 2004)

VII. Probate Exception Inapposite

60. The breach of fiduciary claim raised herein was filed on February 27, 2012 in the Southern District of Texas and was dismissed under the probate exception. A unanimous decision by the Fifth Circuit reversed and remand for further proceedings finding the matter outside the probate exception. *Curtis v. Brunsting* 704 F.3d 406 (Jan.9, 2013) Plaintiffs here do not ask the federal court to probate a will, administer an estate or interfere with property in the custody of a state court.

VIII. Full Faith and Credit

61. The published unanimous opinion of the federal Fifth Circuit Court of Appeal in *Curtis v. Brunsting* 704 F.3d 406 (Jan 2013) and the findings of fact and conclusions of law entered in the Memorandum of Injunction (Doc 45) issued April 19, 2013 [Ex 3-30] in Southern District of Texas Cause No. 4:12-cv-592 are entitled to full faith and credit under Article IV Section 1 of the Constitution for the United States of America.

62. Harris County Statutory Probate Court No. 4 has never had subject matter jurisdiction over this trust controversy and no orders entered in that theater over this living trust have any efficacy or validity nor are they entitled to any respect whatsoever as the Brunsting wills were pour-over wills subject to independent administration governed by Texas Estates Code 401-405.

63. The independent administration of both estates terminated at the approval of the inventory on April 5, 2013 when no further action of any nature could be had in the probate court pursuant to Texas Estates Code § 402.001 and the action filed five days later exceeded the scope of the legislative delegation of authority provided by Texas Government Code § 25.0021 as limited by Texas Estates Code § 402.001.

IX. Comity Inapposite

64. As explained in *Royal Ins. Co. of America v. Quinn-L Cap. Corp.* Comity is not a valid consideration in this case due to the complete absence of subject matter jurisdiction in the probate theater of operations as will be discussed in the statements

of facts supported by citations to law with 220 exhibits.

“Where the federal case is filed substantially prior to the state case, and significant proceedings have taken place in the federal case, we perceive little, if any, threat to our traditions of comity and federalism. See Moses H. Cone Hosp., 460 U.S. at 21-22, 103 S.Ct. at 940 (fact that substantial proceedings have occurred is a relevant factor to consider in deciding whether to abstain). In fact, by filing a state suit after a federal action has been filed, the state plaintiff can be viewed as attempting to use the state courts to interfere with the jurisdiction of the federal courts. We agree with Royal that if we were to hold that Jackson applied in this scenario, litigants could use Jackson as a sword, rather than a shield, defeating federal jurisdiction merely by filing a state court action. Neither Jackson nor the concerns underlying it mandate such a result.” Royal Ins. Co. of America v. Quinn-L Cap. Corp. 3 F.3d 877 (5th Cir. Nov. 5, 1993)

65. Plaintiff Curtis Southern District of Texas Cause No. 4:12-cv-592 (Feb 2012)

was the 1st related case filed in any court.

66. Pending Federal Injunction (April 9, 2013) Memorandum of Injunction (April 19, 2013) [Ex 3-30] found the existence of a fiduciary relationship and noted anomalies with the documents submitted by Anita Brunsting as the alleged trust.

67. Appointment of Special Master (May 9, 2013) [Ex 1-45] showed that Anita, as sole trustee as of December 21, 2010 was unable to provide an accounting to the income beneficiaries justifying legal action to compel specific performance.

68. Unlike private cartel criminal racketeering enterprises, elements and evidence of the color of litigation probate mafia enterprise can be mostly established by pointing to judicial admissions ensconced upon the public record.

69. Bayless Harris County District Court 164 (January 29, 2013) action was only ½ of the total action and Bayless Harris County Probate Court No. 4 Cause No 412249-401 (April 9, 2013) was the other half [Ex 3-24]. These actions share a Single Nucleus of Operative Facts. After improperly filing the trust related action in the probate court Bayless filed a motion to transfer the Harris County District Court 164 case to probate, [Ex 2-26] judicially admitting that the two cases could not be properly litigated in separate proceedings.

70. It should also be noted that Defendant Bayless filed her trust related tort claims in the probate court for the sole purpose of undermining federal court jurisdiction and that the attorneys agreed motion to remand the federal court case to the probate court the case had not been removed from, is and was invalid as there was never a court of competent jurisdiction to receive it.

Complete Absence of State Probate Court Subject Matter Jurisdiction

71. The terms “probate case”, “probate matter”, “probate proceeding” and “estate of Nelva Brunsting” are vacuous labels used by these defendants in effort to undermine federal jurisdiction and avoid accountability for their criminal conspiracy. It should also be noted that, in the complete absence of state probate court subject matter jurisdiction, the absence of an estate subject to in rem proceedings and the absence of an estate administrator, these attorney defendants have been posing and posturing as if representing clients in litigation when they have only been pursuing

their own unjust enrichment at the expense of the real parties in interest with absolutely no evidence of any intention to resolve substantive issues nor to even allow the introduction of evidence in an evidentiary hearing.

72. No evidence was ever qualified in an evidentiary hearing as there were no evidentiary hearings and every attempt to litigate was conspicuously converted into a status conference.

73. There have never been any fully litigated state court determinations as there has never been any legitimate petitioning activity nor has there been an evidentiary hearing in any state court at any time in relation to this trust controversy.

X. Statement of Facts in Support of Racketeering Claims

74. In effort to make this menagerie more manageable Plaintiffs Memorandum of Facts is incorporated herein by reference as if fully restated and divides the claims into several parts beginning with “Part 0 Introduction”, “Part 1 Trust Chronology”, “Part 2 The Back End Exploitation”, “Part 3 The Participants”, “Part 4 Predicate Acts and common law claims”, “Part 5 Damages”. For this reason, the exhibits are generally numbered according to these sections.

XI. Privity Inapposite

75. In this case we have the estate planning attorneys betraying the fiduciary duty of undivided loyalty owed to their clients, Elmer and Nelva Brunsting, and entering

into a conflicting confidential relationship with Defendant Anita Brunsting, the weak link in the family moral fabric and a member of the successor beneficiary class.

76. The disloyal estate planning attorneys then proceeded to implement illicit changes to their legitimate clients trust agreement in the wake of each family crisis event to install their illicit client as trustee by manufacturing illegitimate change instruments immediately after every family crisis, as shown in Part 1, The Trust Chronology Section of the statement of facts.

77. When Defendants Candace Kunz-Freed and Bernard Mathews III betrayed the fiduciary duty of undivided loyalty owed to clients Elmer and Nelva Brunsting they abandoned privity with their clients and entered into privity with Anita Brunsting, a member of the successor beneficiary class. Privity is not a defense for Defendants Candace Kunz-Freed or Bernard Mathews III in this matter as both have waived privity and the de jure trustee has the authority to prosecute each of these defendants for trespass and injuries suffered by “the trust”.

K. The Perfect Estate Plan

78. Elmer and Nelva Brunsting had a son and four daughters they wanted to benefit from their lifetime of acquired and inherited family wealth and having heard a great deal about corruption in the Harris County Probate Court [Ex 0-7] they called an estate planning and asset protection firm. Their concerns were quite simply to [avoid guardianship](#) [Ex 0-8] and to transfer their assets to their five progeny in equal

proportions at their passing, while minimizing death taxes and avoiding the probate courts. In order to accomplish this purpose they retained the assistance of estate planning attorney Albert Vacek Jr. who gave specific assurances that his products and services would accomplish these purposes.

79. The Brunsting's estate plan consisted of wills directing independent administration and devising solely to their family living trust [Ex [0-9](#)], [Ex [0-10](#)]. Elmer Brunsting passed April 1, 2009 and Nelva Brunsting passed November 11, 2011.

XII. PART 1 Trust Chronology

Trust Formation and Early Amendments:

A. The Original 1996 Family Trust [Ex 1-4]

1. In 1996 Elmer Brunsting and his wife Nelva created the "Brunsting Family Living Trust" for their benefit and for the benefit of their five adult progeny. Elmer and Nelva were the original co-trustees and Anita Brunsting was named as the sole successor trustee.

B. Irrevocable Life Insurance Trust [Ex 1-5]

2. In 1999 Elmer and Nelva also created an irrevocable Life Insurance Trust for the benefit of their five issues, naming Anita Brunsting as the sole trustee.

C. January 12, 2005 – The Restatement [Ex 1-6]

3. In 2005 Elmer and Nelva restated their trust, replacing the original 1996 trust agreement in its entirety. The [2005 Restatement](#) removed Anita from becoming a successor trustee and replaced her with Carl and Amy as successor co-trustees with Candace Curtis as the alternate.

D. September 6, 2007 – The 2007 Amendment [Ex 1-7]

4. In 2007 Elmer and Nelva jointly amended Article IV of the [2005 Restatement](#) to replaced Amy Brunsting with Candace Curtis, making Carl Brunsting and Candace Curtis the successor co-trustees and naming Frost Bank as the alternate.

E. The Power to Alter or Amend

5. [Article III](#) of the [2005 Restatement](#) provides an “either/or” for making changes to the trust agreement. Either (1) the signature of both Settlers or (2) a court of competent jurisdiction, neither of which accompanied any instrument dated after June 9, 2008 and both are necessary to maintain the separation of legal and equitable title.

F. “Our Right to Amend or Revoke This Trust”

Section A. We May Revoke Our Trust

While we are both living, either of us may revoke our trust. However, this trust will become irrevocable upon the death of either of us. Any Trustee, who is serving in such capacity, may document the non-revocation of the trust with an affidavit setting forth that the trust remains in full force and effect. Tile affidavit may, at the Trustee's discretion, be filed in the deed records in each county in which real property held in trust is located or in the county in which the principal assets and records of the trust are located. The public and all persons interested in and dealing with the trust and the Trustee may rely upon a certified copy of the recorded affidavit as conclusive evidence that the trust remains in full force and effect.

Section B. We May Amend Our Trust

This trust declaration may be amended by us in whole or in part in a writing signed by both of us for so long as we both shall live. Except as to a change of trust situs, when one of us dies, this trust shall not be subject to amendment, except by a court of competent jurisdiction.

Each of us may provide for a different disposition of our share in the trust by using a qualified beneficiary designation, as we define that term in this agreement, and the qualified beneficiary designation will be considered an amendment to this trust as to that Founder's share or interest alone.”

Triggering of Irrevocability and Post-2008 Alterations:

80. On June 9, 2008, Elmer Brunsting was certified non compos mentis by three

physicians. The trust thus became irrevocable in accordance with Article III of the 2005 Restatement requiring the signature of both settlors for making of any changes, “amendments” to the trust agreement.

G. *[Ex 1-11] July 1, 2008 Appointment and [Ex1-12] Certificates of Trust*

81. Within two weeks of Elmer’s incapacity (1st Hurrah) estate planning attorney Defendant Candace Kunz-Freed, with the assistance of Vacek associate attorney Defendant Bernard Lisle Mathews III, began producing alterations to Elmer and Nelva’s trust agreement, beginning with drafting instruments altering Article IV, removing Plaintiff Candace Curtis and installing their new client, Anita Brunsting, as successor co-trustee with Carl Brunsting and issuing new certificates of trust.

82. Notwithstanding the fact that the trust had become effectively irrevocable, estate planning attorney Defendant Candace Kunz-Freed, with the assistance of Vacek associate attorney Defendant Bernard Lisle Mathews III, continued to produce incremental alterations to Elmer and Nelva’s trust agreement in the wake of every family crisis.ⁱ

83. None of the instruments authored after June 9, 2008 were signed by both Settlor’s nor approved by a court of competent jurisdiction standing in for the absent co-trustee and none of the instruments created after that date could affect the trustee designations in Article IV or the disposition provisions expressed in Article X

Section B.

H. *Elmer Brunsting passed on April 1, 2009 (2nd Hurrah)*

84. Elmer Brunsting passed on April 1, 2009 and the trust clearly because irrevocable under Article III of the Restatement. [Ex 1-6]

“Tex. Prop. Code § 112.051 (a) A settlor may revoke the trust unless it is irrevocable by the express terms of the instrument creating it or of an instrument modifying it.” Tex. Prop. Code § 112.051

85. When [Ex1-3a] [Elmer passed on April 1, 2009](#) the successor co-trustees for the “Irrevocable Family Trust could only be those named in the [Ex1-7] [2007 Amendment](#) as none of the instruments that followed Elmer’s incapacity conformed to the Article III requirements for amending the trust. The appointments of Anita and Amy as co-trustees were an improper attempt to amend Article IV and the associated Certificates of Trust are equally invalid.

86. Carl Brunsting and Candace Curtis are the lawful co-trustees for the irrevocable trust but the Candace Kunz-Freed, Anita Brunsting duo continued to generate illicit change instruments following each family crisis event.

I. *[Ex 1-13] February 24, 2010 Appointment and [Certificates of Trust](#)*

87. These are a repeat of the improperly drafted July 2008 change instruments that do not appear to have been signed at all.

J. *[Ex 1-14] [June 15, 2010 Qualified Beneficiary Designation and](#)*

Testamentary Power of Appointment

88. The only value for this instrument would be as part of an accounting ledger or balance sheet. It fails to qualify as a testamentary instrument because it was not signed by two disinterested witnesses as required of a testamentary instrument nor could the living trust be converted to a testamentary trust by such means. Article III also identifies the “Qualified Beneficiary Designation and Testamentary Power of Appointment” as an amendment to the trust. You cannot amend an irrevocable trust but that’s law and law appears to be the furthest from consideration when the All Mighty Dollar is the only God worshiped by the probate mafia.

K. *[Ex 1-15] July 3, 2010 Carl falls ill with encephalitis (3rd Hurrah) and is in coma*

89. When Carl fell weak the Vacek & Freed team went to work exploiting this family crisis as another opportunity to continue their alterations of Elmer and Nelva's irrevocable trust agreement and, with Carl in a coma, Anita took that as an opportunity to launch a character attack on Carl’s wife Drina, thus distracting attention from the improperly drafted change instruments Anita and the Vacek crew were making to remove Carl as a successor co-trustee.

90. Freed's notes say [\[Ex 1-16\]](#) "*Anita called, Carl has encephalitis, amendment to trust, Anita and Amy to be co-trustees*".

L. [Ex 1-17] August 25, 2010 Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement

- [Ex 1-18] [2010-08-25 3 certificates of trust dated 2010 08 25.pdf](#)
- [Ex 1-19] [2010-08-25 Appointment of Successor Trustee P1016-1020.pdf](#)
- [Ex 1-20] [2010-08-25 P1016-1020 Appointment of Successor Trustee.pdf](#)
- [Ex 1-21] [2010-08-25 P156-192 8-25-10 QBD Above the Line.pdf](#)
- [Ex 1-22] [2010-08-25 P193-229 8-25-10 QBD CAN before signature.pdf](#)
- [Ex 1-23] [2010-08-25 P407-443 8-25-10 QBD On the line.pdf](#)
- [Ex 1-24] [2010-08-25 P843-848a Certs of Trust.pdf](#)
- [Ex 1-25] [2010-08-25 QBD Signature Page Versions Binder.pdf](#)
- [Ex 1-27] [2010-08-25 Statement of First Witness.pdf](#)

91. The gem of the illicit instruments manufactured by the estate planning attorneys was an instrument titled “Qualified Beneficiary Designation and Testamentary Power of Appointment under living Trust Agreement” dated August 25, 2010 (8/25/2010 QBD) that claims to have replaced the irrevocable trust in its entirety and contains the corruption of blood provision used by the probate mafia enterprise participants to threaten the beneficiaries with forfeiture of property interests if they refuse to capitulate to the attorneys ransom demands by signing a “settlement Agreement” labeling the extorted ransom as “fee’s for legal services”.

92. Plaintiff/De Jure Trustee Candace Curtis has steadfastly refused to launder the extorted ransom by contract.

93. This is the second Qualified Beneficiary Designation and Testamentary Power

of Appointment. It does not revoke the first but reinforces it and also fails to qualify as a testamentary instrument because it wasn't signed by two disinterested witnesses. Notwithstanding that an irrevocable living trust cannot be converted into a testamentary trust by the abuse of language.

94. Not only did Nelva lack the legal capacity to exercise plenary powers over the irrevocable trust without causing merger, this otherwise improperly drafted change instrument is believed to be a forgery as, after a number of disclosures, the alleged August 25, 2010 QBD/TPA shows up in the record with three distinctly different signature page variations.

6. Disclosed in [Ex 1-28] [Anita's 156 page objections](#) filed December 5, 2014. The QBD appears at pdf pages 96 through 132 with signature page 37 at p132 bearing Bates stamp [P229].
7. Case 4:12-cv-00592 [Ex 1-29] [Document 1-12](#) (pgs. 1-30) and [Ex 1-30] [Doc. 1-13](#) (pgs. 1-7), Filed TXSD on 02/27/12 with signature at Doc. 1-13 Page 7 of 20
8. In [Ex 1-31] [Carole's 133 page objection](#) filed Feb. 17, 2015. The QBD appears at pdf pages 97 through 133 with signature page 37 appearing at p133 and bearing Bates stamp [P192].
9. August 25, 2010 [Ex 1-32] Appointment of Successor Trustees are invalid
10. August 25, 2010 [Ex 1-33] [Certificates of Trust](#) [V&F 000207-251] are invalid
11. These last two 8/25/2010 change instruments are a repeat of the same July 1,

2008 and February 24, 2010 change instruments.

12. The provisions for administration and disposition of Nelva and Elmer Brunsting's irrevocable trust remains those contained in the [2005 Restatement](#) as amended in 2007. The [September 6, 2007 Amendment](#) was the last family trust instrument signed by both Settlor. Carl and Candace are the de jure co-trustees.
13. At page 3 of 13, in their June 26, 2015 [Ex 1-34] "[No-Evidence Motion for Summary Judgement](#)", alleged co-trustees Anita and Amy Brunsting argue that Plaintiffs Carl and Candace can produce no evidence that the 8/25/2010 QBD/TPA is invalid nor "that Anita and/or Amy were present when Nelva allegedly signed the 8/25/2010 QBD".
14. "There is also no evidence in the record that suggests Plaintiff Curtis or Plaintiff Brunsting was present when Nelva allegedly executed the 8/25/10 QBD. There is no evidence that Defendant Carole Brunsting was present when Nelva executed the 8/25/10 QBD" and [\[Ex 1-35\]](#) there is a gap surrounding that date in the estate planning attorneys notary log.
15. Thus, neither Anita, nor Amy, nor Carole claim to have been present when Nelva is alleged to have signed the instrument and yet each produced a different signature page version of the instrument. The Notary Public on all of the post June 2008 "change instruments" was estate planning attorney Candice Kunz-Freed, whose notes show that she received her instructions to [\[Ex 1-16\] "change the trust"](#) from Anita and we do have evidence of that. It should also be noted that [\[Ex 1-35\] Kunz-Freed's notary log](#) fails to show that three separate copies of the 8/25/2010 QBD were notarized as required by Gov't Code § 406.014, if in fact

three separate instruments had been signed on that date. As already stated, Texas Property Code Section §112.051 does not allow a Settlor to amend a trust that has become irrevocable by its own terms so this 8/25/2010 QBD is necessarily invalid whether the instrument was signed by Nelva or not.

M. *[Ex 1-38] December 21, 2010 Resignation of Original Trustee* [[V&F906-915](#)]

N. *[Ex 1-39] December 21, 2010 Appointment of Successor trustee* [[V&F240-245 & 906-915](#)]

O. *[Ex 1-40] December 21, 2010 Certificates of Trust*, [[V&F906-915](#)]

[Ex 1-41] [2010-12-21 Certificate of Trust Decedent V&F 000232-234.pdf](#)

[Ex 1-42] [2010-12-21 Certificate of trust for the NEW family trust VF 000237-239.pdf](#)

[Ex 1-43] [2010-12-21 Certificate of Trust Survivor VF 000235-238.pdf](#)

L. Assuming Facts of No Value

95. The illicit August 25, 2010 QBD/TPA that Defendants point to as “the trust”, claims to have amended an irrevocable trust. It/they are not in evidence as Plaintiff Candace Curtis objected to assuming fact and probate theater defendant attorneys Stephen Anthony Mendel and Neal Spielman have refused or otherwise failed to introduce these instruments in an evidentiary hearing in attempt to qualify them as evidence and they will not because they cannot.

96. Until it has been introduced by eye witness testimony at an evidentiary hearing and qualified as evidence, beneficiary Candace Curtis objects to any

reference to this instrument as assuming facts not in evidence. It really doesn't matter as far as declaratory judgment is concerned because Nelva had no plenary power to amend the irrevocable trust and her alleged resignation and appointment of Anita are improper attempts to amend the trust that fail to conform to the requirements of Article III and would result in merger of legal and equitable titles without the approval of a court of competent jurisdiction. See Texas Property Code Sections §§112.034, 112.051(a)

Texas Property Code Sec. 112.034. MERGER. (a)If a settlor transfers both the legal title and all equitable interests in property to the same person or retains both the legal title and all equitable interests in property in himself as both the sole trustee and the sole beneficiary, a trust is not created and the transferee holds the property as his own. This subtitle does not invalidate a trust account validly created and in effect under Chapter 113, Estates Code.

(b)Except as provided by Subsection (c) of this section, a trust terminates if the legal title to the trust property and all equitable interests in the trust become united in one person.

(c)The title to trust property and all equitable interests in the trust property may not become united in a beneficiary, other than the settlor, whose interest is protected under a spendthrift trust, and in that case the court shall appoint a new trustee or cotrustee to administer the trust for the benefit of the beneficiary.

Texas Property Code Sec.112.051

REVOCATION, MODIFICATION, OR AMENDMENT BY SETTLOR.

(a) A settlor may revoke the trust unless it is irrevocable by the express terms of the instrument creating it or of an instrument modifying it.

97. The same objection is hereby made to the instruments dated December 21,

2010. Instruments from both dates appear to be scanned analog instruments bearing the signature of estate planning attorney/notary Candace Kunz-Freed, to which digital images of Nelva's signature were added. According to the A.B.A. these are commonly referred to as deep fakes in today's legal theater but are of no probative value in determining the validity trust instruments whether deep fakes or not.

98. The fact remains, despite all other considerations, the instruments created after June 9, 2008 are invalid, as attempting to make changes that Nelva had no plenary legal capacity to make and which Anita and Amy and their attorneys seek to use in their attempt to achieve an unlawful end, the elimination of other beneficiaries, by failing to account and causing litigation to be brought for the purpose of advancing a theory that, if true, would enlarge their share. This is a violation of the de jure in Terrorem clause in the 2005 Restatement.

Probate actions are in rem, Trust actions are personam matters in equity

99. Equity presumes that what should have been done has been done and thus, the trust does not fail; these improperly drafted change instruments are what fail.

M. Nelva Brunsting's passed [Ex 1-3a] [November 11, 2011](#)

100. At the passing of Elmer Brunsting April 1, 2009, the trust corpus was divided into two separate shares. Nelva's share (The Survivors Trust) was to terminate at the passing of the last settlor to die [Article VIII Section D] and Elmer's share (The Decedent's Trust- a misnomer) was also intended to terminate at the passing of the

last settlor to die [Article IX Section D]. The assets were to be divided by five and distributed into five separate but equal value shares [Article X]. None of this was possible without a proper accounting. Anita failed to produce the mandatory accounting and was incapable of doing so due to her failure to establish and maintain books and records of account. (see [Ex1-45] appointment of special master)

101. This completes the overview of the front-end estate planning bait and switch and according to [Ex 1-46] “How to Steal Your Family Inheritance”; this is where Anita Brunsting expected to laugh all the way to the bank. Unfortunately everyone tends to lawyer up, the attorneys all collude together to maximize their take from the family money cow and the only ones laughing all the way to the bank are the attorneys.

XIII. Part 2 the Back End Exploitation

The Court Menagerie

102. Unfortunately, a lawsuit had to be brought to enforce the obligations of the trustee to account to the beneficiary and this was exactly what Anita Brunsting thought she wanted in order to play the corruption of blood no-contest card built into the heinous extortion instrument (the 8/25/2010 QBD). [Ex 1-14]

Southern District of Texas [SDTX] Cause No. 4:12-cv-592

103. Due to Defendant Anita Brunstings failure to account, on Feb 27, 2012 California resident Candace Curtis filed a breach of fiduciary action against Anita

Brunsting and Amy Brunsting in the Southern District of Texas under diversity jurisdiction, seeking a proper accounting and fiduciary disclosures.

104. In her complaint she noted Anita's plan to steal the family trust in a way that if Carl or Candace object, Anita would get to keep their share. Candace also alleged that the defendants had been stalking, wiretapping and email monitoring their Mothers communications. All of these allegations become self-authenticating in the course of the events that follow.

N. Rooker-Feldman and Probate Exception Doctrines Inapplicable

105. There is only one nucleus of operative facts and because Plaintiff's claims were originally filed in the Southern District of Texas and not a state court, the Rooker-Feldman Doctrine is inapplicable per the United States Supreme Court holding in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.* 544 U.S. 280 (2005) • 125 S. Ct. 1517 (Mar. 30, 2005).

Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280, 291-294 (2005). *Held: the Rooker-Feldman doctrine is confined to cases of the kind from which it acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the federal district court proceedings commenced and inviting district court review and rejection of those judgments. Rooker-Feldman does not otherwise override or supplant preclusion doctrine or augment the circumscribed doctrines allowing federal courts to stay or dismiss proceedings in deference to state-court actions.*

106. The subject matter of Plaintiff Curtis' claims having been dismissed under the probate exception then reversed and remanded as outside the probate exception by

the Fifth Circuit Court of Appeal holding in *Curtis v. Brunsting* 704 F.3d 406 (Jan. 9, 2013) the probate exception to federal jurisdiction is also inapplicable to the claims presented herein as Plaintiff's do not ask this court to probate a will, administer a decedent's estate nor interfere with property in the custody of a state court.

The Fifth Circuit has interpreted the Supreme Court's holding in Marshall to require a two-step inquiry "into (1) whether the property in dispute is estate property within the custody of the probate court and (2) whether the plaintiff's claims would require the federal court to assume in rem jurisdiction over that property." Curtis v. Brunsting, 704 F.3d 406, 409 (5th Cir. 2013)

The Fifth Circuit has rejected equating trust administration with administration of a decedent's estate, at least in the context of a revocable trust, because the assets do not become part of the decedent's estate at any point. See Curtis v. Brunsting, 704 F.3d 406, 410 (5th Cir. 2013) ("[B]ecause the assets in a living or inter vivos trust are not property of the estate at the time of the decedent's death, having been transferred to the trust years before, the trust is not in the custody of the probate court and as such the probate exception is inapplicable to disputes concerning administration of the trust.").

107. Actions involving administration of a living trust are actions in personam, which are governed under Title 9 of the Texas Property Code whereas probate is an action in rem involving the administration of a decedent's estate governed under the Texas Estates Code.

Texas Estates Code Chapter 32, Jurisdiction

Sec. 32.001(d) The administration of the estate of a decedent, from the filing of the application for probate and administration, or for administration, until the decree of final distribution and the discharge of the last personal representative, shall be considered as one

proceeding for purposes of jurisdiction. The entire proceeding is a proceeding in rem.

108. The state courts must give the Fifth Circuit Holding full faith and credit under U.S. Const. Article IV Section 1.

109. Plaintiff's Here, do not ask the United States Court to probate a will, administer an estate nor interfere with property in the custody of a state court but to establish rights in property, declare the legitimacy and illegitimacy of trust instruments, enforce an injunction issued by a United States Judge, and hold the Defendants to account for the harms caused and the crimes committed against this family by these Defendants in their color-of-law conspiracy to loot a family trust for their own unjust enrichment.

Colorable Parallel State Court Actions

110. While the federal matter was undergoing the appeal process Defendant Bobbie G. Bayless caused the estate planning attorneys to file the Brunstings wills in Harris County Probate.

Harris County Probate Court No. 4

111. Estate of Elmer H. Brunsting No. 412248. Will admitted to probate unchallenged, sole devise to living trust, Letters Testamentary for independent administration issued to Carl Henry Brunsting. Verified Inventory filed and approved by the probate court April 5, 2013 and Drop Order Issued.

112. Estate of Nelva E. Brunsting No. 412249. Will admitted to probate unchallenged, sole devise to living trust, Letters Testamentary for independent administration issued to Carl Henry Brunsting. Verified Inventory filed and approved by the probate court April 5, 2013 and Drop Order Issued.

113. 402.001 No further action of any nature (see appeal)

114. On April 9, 2013 Defendant Bayless filed tort claims under the Declaratory Judgements Act exclusively related to trust administration naming Carl Brunsting individually and as independent executor for the estates of Elmer and Nelva Brunsting.

115. Carl's (Bayless) claims were brought under the Declaratory Judgements Act but there has been no the Declaratory Judgement as there has never been an evidentiary hearing.

116. The two trust corpus' made separate under Article VII at the passing of the first Settlor are both governed under provisions of the 2005 Restatement. The trust was to terminate and both corpus were to be combined and distributed at the passing of the second settlor, an event that transpired on November 11, 2011.

117. The fact that de facto co-trustees Anita Brunsting and Amy Brunsting failed to perform these actions according to their fiduciary obligations makes them liable for any damages suffered by the beneficiary and accountable for any benefit they may have obtained as a result of their failure to perform the obligations of the office they

claim to occupy.

118. Due to litigation being caused by Anita's wrongful conduct she not entitled to recover attorney fees from the trust and the Defendants attorneys, Stephen Mendel and Neil Spielman, are liable for misapplication of fiduciary property and exploitation of child, elder and disabled beneficiaries for stealing from these trusts under the pretext of fees for legal services.

XIV. Proof of Service

119. Plaintiff will be requesting leave to file *informa pauperis* with request that these defendants be served by the U.S. Marshalls Service.

I. ⁱ CONFLICT: It should be noted here that when litigation was brought in effort to obtain an accounting and fiduciary disclosures, Anita Brunsting, and her new co-trustee Amy Brunsting, were represented by Vacek & Freed Attorneys [Ex1-47] Candace Kunz-Freed and Bernard Lisle Mathews III, *infra*. These conflicts of interest are violations of Rule 1.06(a), (d), (e) and (f) of the Disciplinary Rules of Professional Conduct and is thus conduct *ultra vires* the office of attorney. It is also further evidence that these estate planning attorneys betrayed their fiduciary duty of undivided loyalty, abandoned privity with their clients and, by entering into a conflicting confidential relationship with Anita Brunsting, they entered into privity with the entire trust beneficiary class and owe fiduciary duties to the entire trust beneficiary class.